

THE DELIMITATION OF
CONSTITUENCIES
FOR
THE UNION HOUSE OF ASSEMBLY
UNDER THE
SOUTH AFRICA ACT

A Thesis presented for the degree of Master of Arts
at the University of Cape Town, 1953

by

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DELEGATES TO THE NATIONAL CONVENTION

CAPE

Sir Henry de Villiers

J. X. Merriman

J. W. Sauer

F. S. Malan

Sir Starr Jameson

T. W. Smartt

E. H. Walton

J. H. M. Beck

J. W. Jagger

C. H. van Heerden

Colonel W. E. M. Stanford

G. H. Maasdorp

NATAL

Sir F. R. Moor

T. Hyslop

E. M. Greene

C. J. Smythe

W. B. Morcom

TRANSVAAL

General L. Botha

General J. C. Smuts

H. C. Hull

Sir G. H. Farrar

Sir J. P. Fitzpatrick

General S. W. Burger

General J. H. de la Rey

H. L. Lindsay

ORANGE RIVER COLONY

A. Fischer

General J. B. M. Hertzog

M. T. Steyn

General C. R. de Wet

A. Browne

SOUTHERN RHODESIA

Sir William Milton

Sir C. P. J. Coghlan

Sir Lewis Michell

President: Sir H. de Villiers

Vice-President: M. T. Steyn

Secretaries: Sir E. F. Kilpin (Cape)

G. R. Hofmeyr (Transvaal)

G. T. Plowman (Natal)

A. M. N. de Villiers (Orange River Colony)

The only change made in the personnel was after the retirement of Morcom at the end of the January Cape Town sitting, his place being taken by Sir T. Watt.

THE DRAFT ACT AS AGREED TO AT CAPE TOWN FOR SUBMISSION TO THE
VARIOUS PARLIAMENTS (CLAUSES PERTAINING TO THE DELIMITATION OF
CONSTITUENCIES)

Clause 38

Between the date of the passing of this Act and the date fixed for the establishment of the Union the Governor-in-Council of each of the Colonies shall nominate a Judge of any of the Supreme or High Courts of the Colonies, and the Judges so nominated shall upon acceptance by them respectively of such nomination, form a joint commission, without any further appointment, for the purpose of the first division of the Provinces into electoral divisions. The High Commissioner for South Africa shall forthwith convene a meeting of such commission at such time and place in one of the Colonies as he shall fix and determine. At such meeting the Commissioners shall elect one of their number as chairman of such commission. They shall thereupon proceed with the discharge of their duties under this Act, and may appoint persons in any Province to assist them or to act as assessors to the commission or with individual members thereof for the purpose of inquiring into matters connected with the duties of the commission. All moneys required for the payment of the expenses of such commission before the establishment of the Union in any of the Colonies shall be provided by the Governor-in-Council of such Colony. In case of the death, resignation or other disability of any of the commissioners before the establishment of the Union the Governor-in-Council who nominated him shall forthwith nominate another Judge to fill the vacancy. After the establishment of the Union the expenses of the Commission shall be defrayed by the Governor-General-in-Council and any vacancies shall be filled by him.

Clause 39

The commission shall divide each Province into electoral divisions, each returning three or more members: provided that in special cases of sparsely populated areas the commission may delimit divisions in which less than three members shall be returned.

Clause 40(i)

For the purpose of such division as is in the last preceding section mentioned the quota of each Province shall be obtained by dividing the total number of voters in the Province as ascertained at the last registration of voters by the number of members of the House of Assembly to be elected therein.

(ii) Each Province shall be divided into electoral divisions, so that the number of voters in each division shall subject to the provisions of sub-section (iii) be a multiple of the quota and the number of members to be elected therein shall be equal to such multiple.

(iii) The commissioners shall give due consideration to

- (a) community or diversity of interests;
- (b) means of communication;
- (c) physical features;
- (d) existing electoral boundaries;
- (e) sparsity or density of population;

in such manner that while taking the quota of voters as the basis of division the commissioners may whenever they deem it necessary to depart therefrom but in no case to any greater extent than fifteen per centum more or fifteen per centum less than the quota.

Clause 41

As soon as may be after every quinquennial census the Governor-General-in-Council shall appoint a commission consisting of three Judges of the Supreme Court of South Africa to carry out any re-division which may have become necessary as between the different electoral divisions in each Province, and to provide for the allocation of the number of members to which such Province may have become entitled under the provisions of this Act. In carrying out such redivision and allocation the commission shall have the same powers and proceed upon the same principles as are by this Act provided in regard to the original division.

Clause 42 (i) The joint commission constituted under section thirty-eight and any subsequent commission appointed under the provisions of the last preceding section shall submit to the Governor-General-in-Council:-







- (a) a list of electoral divisions, with the names given to them by the commission and a description of the boundaries^{of} and the number of members assigned to every such division;
- (b) a map or maps showing the electoral divisions into which the Provinces have been divided;
- (c) such further particulars as they consider necessary.

(ii) The Governor-General-in-Council may refer to the commission for its consideration any matter relating to such list or arising out of the powers or duties of the commission.

(iii) The Governor-General-in-Council shall proclaim the names and boundaries of the electoral divisions and the number of members assigned to each division as finally settled and certified by the commission or a majority thereof and thereafter until there shall be a re-division the electoral divisions as named and defined shall be the electoral divisions of the Union in the Provinces.

(iv) If any discrepancy shall arise between the description of the divisions and the aforesaid map or maps, the description shall prevail.

Clause 43

Any alteration in the number of members of the House of Assembly to be elected in the several Provinces and any re-division of the Provinces into electoral divisions shall in respect of the election of members of the House of Assembly come into operation at the next general election held after the completion of the redivision or of any allocation subsequent upon such alteration and not earlier.

RESOLUTIONS AND AMENDMENTS TO THE DRAFT ACT ADOPTED BY THE FOUR
PARLIAMENTS, APRIL, 1909 AS SUBMITTED TO THE NATIONAL CONVENTION

Cape

Parliament signified its approval of the Draft South Africa Act published on 3rd February, 1909, subject to the following:-

"(i) That with regard to the proviso in section thirty-nine:-

(a) The delimitation of divisions in which less than three members shall be returned be obligatory in all cases sparsely populated areas;

(b) The term 'sparsely populated areas' be clearly defined;

(ii) That the meaning and intent of the Draft Act in regard to the cases in which the quota of voters may be departed from in the delimitation of electoral divisions referred to in paragraph (c) of sub-section (iii) of section forty be more clearly expressed so as to ensure that the departure from the quota shall not be in the discretion of the Commissioners, but shall be made in accordance with the considerations set forth in section forty, sub-section (iii)(a), (b), (c), (d) and (e), so that in sparsely populated areas as nearly as possible fifteen per cent. less voters than the quota and in densely populated areas as nearly as possible fifteen per cent. more voters than the quota shall be entitled to a member, and that areas not falling within either of the above descriptions be dealt with on a sliding scale of departure from the quota made in accordance with the above consideration and within the limit of percentage referred to, and that the terms 'sparsity or density of population' be clearly defined;"

Natal

Natal approved of the Draft Act subject to 11 trifling amendments and the following resolution:-

"That this House hereby instructs the delegates to the National Convention to do all in their power to preserve intact the liberal provisions regarding the franchise contained in the draft Act of Union, and to strenuously oppose any attempt to limit or alter those clauses which provide for equal

political rights"

Transvaal

"That this House approved of the Draft South Africa Act agreed to by the South African National Convention at Cape Town on the 3rd February, 1909."

Orange River Colony

(i) "This House, whilst reserving for deliberation whether any, and if so, what amendments are deemed desirable to be recommended to the consideration of the Convention at its next session, approves of the Draft South Africa Act agreed to by the South African National Convention at Cape Town on the 3rd February, 1909.

(ii) Amendments recommended:-

(a) That through the delegates of this Colony be recommended for consideration of the Convention at its next session the necessity for more clearly expressing the meaning and intent of the Draft Act in regard to the cases in which the quota of voters may be departed from (to the extent of not exceeding 15 per cent. one way or the other) in the delimitation of electoral divisions referred to in sub-section (e) of section three of Clause Forty of the Draft Act."

THE SOUTH AFRICA ACT, 1909 (CLAUSES PERTAINING TO THE DELIMITATION
OF CONSTITUENCIES)

38. Commission for delimitation of electoral divisions.

Between the date of the passing of this Act and the date fixed for the establishment of the Union, the Governor-in-Council of each of the Colonies shall nominate a judge of any of the Supreme or High Courts of the Colonies, and the judges so nominated shall, upon acceptance by them respectively of such nomination, form a joint commission, without any further appointment, for the purpose of the first division of the provinces into electoral divisions. The High Commissioner for South Africa shall forthwith convene a meeting of such commission at such time and place in one of the Colonies as he shall fix and determine. At such meeting the Commissioners shall elect one of their number as chairman of such commission. They shall thereupon proceed with the discharge of their duties under this Act, and may appoint persons in any province to assist them or to act as assessors to the commission or with individual members thereof for the purpose of inquiring into matters connected with the duties of the commission. The commission may regulate their own procedure and may act by a majority of their number. All moneys required for the payment of the expenses of such commission before the establishment of the Union in any of the Colonies shall be provided by the Governor-in-Council of such Colony. In the case of the death, resignation, or other disability of any of the Commissioners before the establishment of the Union, the Governor-in-Council of the Colony in respect of which he was nominated shall forthwith nominate another judge to fill the vacancy. After the establishment of the Union, the expenses of the commission shall be defrayed by the Governor-General-in-Council, and any vacancies shall be filled by him.

39. Electoral Divisions.

The commission shall divide each province into electoral divisions, each returning one member.

Method of Dividing Provinces into Electoral Divisions.

40.(1) For the purpose of such division as is in the last preceding section mentioned, the quota of each province shall be obtained by dividing the total number of voters in the province as ascertained at the last registration of voters by the number of members of the House of Assembly to be elected therein.

(2) Each province shall be divided into electoral divisions in such manner that each such division shall, subject to the provisions of subsection (3) of this section, contain a number of voters, as nearly as may be, equal to the quota of the province.

(3) The commission shall give due consideration to:-

- (a) community or diversity of interests;
- (b) means of communication;
- (c) physical features;
- (d) existing electoral boundaries;
- (e) sparsity or density of population;

in such manner that, while taking the quota of voters as the basis of division, the Commissioners may, whenever they deem it necessary, depart therefrom, but in no case to any greater extent than fifteen per centum more or fifteen per centum less than the quota.

41. Alteration of Electoral Divisions.

As soon as may be after every quinquennial census, the Governor-

General-in-Council shall appoint a commission consisting of three judges of the Supreme Court of South Africa to carry out any re-division which may have become necessary as between the different electoral divisions in each province, and to provide for the allocation of the number of members to which such province may have become entitled under the provisions of this Act. In carrying out such re-division and allocation the commission shall have the same powers and proceed upon the same principles as are by this Act provided in regard to the original division.

42. Powers and Duties of Commission for Delimiting Electoral Divisions.

- (1) The joint commission constituted under section thirty-eight, and any subsequent commission appointed under the provisions of the last preceding section, shall submit to the Governor-General-in-Council -
 - (a) a list of electoral divisions, with the names given to them by the commission and a description of the boundaries of every such division:
 - (b) a map or maps showing the electoral divisions into which the provinces have been divided:
 - (c) such further particulars as they consider necessary.
- (2) The Governor-General-in-Council may refer to the commission for its consideration any matter relating to such list or arising out of the powers or duties of the commission.
- (3) The Governor-General-in-Council shall proclaim the names and boundaries of the electoral divisions as finally settled and certified by the commission, or a majority thereof, and thereafter, until there shall be a re-division, the electoral divisions as named and defined shall be the electoral divisions of the Union in the provinces.
- (4) If any discrepancy shall arise between the description of the divisions and the aforesaid map or maps, the description shall prevail.

43. Date from which Alteration of Electoral Divisions to take effect

Any alteration in the number of members of the House of Assembly to be elected in the several provinces and any re-division of the provinces into electoral divisions, shall, in respect of the election of members of the House of Assembly, come into operation at the next general election held after the completion of the re-division or of any allocation consequent upon such alteration, and not earlier.

RELEVANT PROVISIONS OF THE ACT AS AT THE PRESENT DAY

Commission for Delimitation of Electoral Divisions.

38. Between the date of the passing of this Act and the date fixed for the establishment of the Union, the Governor-in-Council of each of the Colonies shall nominate a judge of any of the Supreme or High Courts of the Colonies, and the judges so nominated shall, upon acceptance by them respectively of such nomination, form a joint commission, without any further appointment, for the purpose of the first division of the provinces into electoral divisions. The High Commissioner for South Africa shall forthwith convene a meeting of such commission at such time and place in one of the Colonies as he shall fix and determine. At such meeting the Commissioners shall elect one of their number as chairman of such commission. They shall thereupon proceed with the discharge of their duties under this Act, and may appoint persons in any province to assist them or to act as assessors to the commission or with individual members thereof for the purpose of inquiring into matters connected with the duties of the commission. The commission may regulate their own procedure and may act by a majority of their number. All moneys required for the payment of the expenses of such commission before the establishment of the Union in any of the Colonies shall be provided by the Governor-in-Council of such Colony. In case of the death, resignation, or other disability of any of the Commissioners before the establishment of the Union, the Governor-in-Council of the Colony in respect of which he was nominated shall forthwith nominate another judge to fill the vacancy. After the establishment of the Union the expenses of the commission shall be defrayed by the Governor-General-in-Council, and any vacancies shall be filled by him.

Electoral Divisions.

39. The Commission shall divide each province into electoral divisions, each returning one member.

Method of Dividing Provinces into Electoral Divisions.

40. (1) For the purpose of any division of the provinces into electoral divisions, the quota of each province shall be obtained by dividing the total number of voters in the province as ascertained from an examination of the current voters' lists by the number of members of the House of Assembly to be elected therein.
- (2) Each province shall be divided into electoral divisions in such a manner that each such division shall, subject to the provisions of sub-section (3) of this section, contain a number of voters, as nearly as may be, equal to the quota of the province.
- (3) The Commissioners shall give due consideration to -
- (a) community or diversity of interests;
 - (b) means of communication;
 - (c) physical features;
 - (d) existing electoral boundaries;
 - (e) sparsity and density of population;
- in such manner that, while taking the quota of voters as the basis of division, the Commissioners may, whenever they deem it necessary, depart therefrom, but in no case to any greater extent than fifteen per centum more or fifteen per centum less than the quota.

Delimitation of Electoral Divisions.

41. (1) In the year 1952 and thereafter at intervals of not less than five years and not more than ten years, the Governor-General shall appoint a delimitation commission consisting of three judges of the Supreme Court of South Africa, which shall divide each province of the Union into so many electoral divisions that their number bears, as nearly as possible, the same ratio to one hundred and fifty as, in terms of the current voters' lists, duly corrected up to the latest possible date, the number of white voters in the province in question bears to the total number of white voters in the Union.
- (2) In dividing a province into electoral divisions in terms of sub-section (1) the said commission shall act in accordance with the provisions of section forty.

Powers and Duties of Commission for Delimiting Electoral Divisions.

42. (1) The joint commission constituted under section thirty-eight, and any subsequent commission appointed under the provisions of the last preceding section, shall submit to the Governor-General-in-Council -
- (a) a list of electoral divisions, with the names given to them by the commission and a description of the boundaries of every such division;
 - (b) a map or maps showing the electoral divisions into which the provinces have been divided;
 - (c) such further particulars as they consider necessary.
- (2) The Governor-General-in-Council may refer to the commission for its consideration any matter relating to such list or arising out of the powers or duties of the commission.
- (3) The Governor-General-in-Council shall proclaim the names and boundaries of the electoral divisions as finally settled and certified by the commission, or a majority thereof, and thereafter, until there shall be a re-division, the electoral divisions as named and defined shall be the electoral divisions of the Union in the provinces.
- (4) If any discrepancy shall arise between the description of the divisions and the aforesaid map or maps, the description shall prevail.

Date from which Alteration of Electoral Divisions to take effect.

43. Any alteration in the number of members of the House of Assembly to be elected in the several provinces, and any re-division of the provinces into electoral divisions, shall, in respect of the election of members of the House of Assembly, come into operation at the next general election held after the completion of the re-division or of any allocation consequent upon such alteration, and not earlier.

DELIMITATION COMMISSION PERSONNEL

<u>Date of Commission</u>	<u>Names of Judges</u>	<u>Province</u>	<u>Secretary</u>
1910	P. M. Lawrence (Chairman)	Cape	C. R. Hofmeyr
	W. H. Beaumont	Natal	
	W. H. Solomon	Transvaal	
	A. W. Fawkes	Orange River Colony	
1913	P. M. Lawrence "	Cape	E. R. Roper
	W. H. Solomon	Transvaal	
	A. W. Fawkes	Orange Free State	
1919	J. H. Lange "	Griqualand West	J.R. Hartshorn
	A. W. Mason	Transvaal	
	F. G. Gardiner	Cape	
1923	A. W. Mason "	Transvaal	P.F. Kincaid
	F. G. Gardiner	Cape	
	F. A. Hutton	Griqualand West	
1928	H. S. van Zijl "	Cape	ditto
	W. Pittman	Eastern District (Cape)	
	J.H.F.E.R.C. Gey van Pittius	Transvaal	
1932	H. S. van Zijl (Chairman)	Cape	A.H.M. Louw
	W. Pittman	Eastern District	
	G. J. Maritz	Transvaal	
1937	C. W. H. Lansdown "	Natal	G. T. Doyle
	A. v.d. S. Centlivres	Cape	
	C. L. Botha	Orange Free State	
1942	C. W. H. Lansdown "	Natal	ditto
	J. M. Murray	Transvaal	
	J. E. de Villiers	Cape	
1947	J. M. Murray "	Transvaal	ditto
	J. E. de Villiers	Cape	
	J. C. de Wet	Natal	
1953	C. P. Brink "	Orange Free State	
	J. W. van Zijl	Cape // C. de W. van Zyl	
	D. O. K. Beyers	Griqualand West D.A. Barnard	
		(Assistant Secretary	

THE COST OF EACH DELIMITATION COMMISSION

	£
1910	3,602
1913	736
1919	4,009
1923	2,907
1927	6,087
1932	3,235
1937	3,325
1942	3,383
1947	3,539
1952	8,958

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B I B L I O G R A P H Y

OFFICIAL PUBLICATIONS

1. SOUTH AFRICAN IMPERIAL BLUE BOOKS

Letters Patent establishing a Parliament in the Cape of Good Hope,	23rd May, 1850.
Order-in-Council re. Ordinance for constituting a Parliament for the Cape,	11th March, 1853.
Letters Patent and Order-in-Council re. Constitutional changes in the Transvaal	31st March, 1905 (Cd. 2400)
The Transvaal Constitution Letters Patent, 1906	6th December, 1906 (Cd. 3250)
The Orange River Colony Constitution Letters Patent, 1907,	5th June, 1907 (Cd. 3526)

2. VOTES AND PROCEEDINGS

- a. Votes and proceedings of the House of Assembly Cape of Good Hope, 1908, 1909.
- b. Minutes of proceedings of the Senate Cape of Good Hope, 1908, 1909.

3. PARLIAMENTARY DEBATES

Cape House of Assembly and Legislative Council	1908, 1909.
Natal Legislative Assembly and "	1908, 1909
Transvaal Legislative Assembly and Legislative Council	1908, 1909
Orange River Colony Legislative Assembly and Legislative Council	1908, 1909
Debates of the House of Representatives (New Zealand),	1945
Debates of the Union House of Assembly,	1952
Debates of the Union House of Assembly,	1953.

4. STATUTES

The following statutes have been consulted for this purpose.

To adjust the electoral divisions of the Colony of Natal.	Law No. 1, 1873 (Natal)
To Amend the constitution of Natal	Law No. 1, 1883 "
To alter and sub-divide the electoral district of Pietermaritzburg County	Law No. 28, 1887 "
To amend Law No. 1 of 1883	Law No. 5, 1889 "
To provide for the establishment of Responsible Government	Act No. 14, 1893 "
Parliamentary Representation Act, 1898	Act No. 19 of 1898 (Cape)
To provide for the Representation of Zululand	Act No. 10, 1898 (Natal)
The Northern Districts Parliamentary Representation Act	Act No. 3, 1903 "
Additional Parliamentary Representation Act, 1904	Act No. 5 of 1904 (Cape)
An Act to alter certain electoral districts	Act No. 40, 1908 (Natal)

P R E F A C E

The writer considered it fortunate that she had undertaken such a thesis immediately after a redelimitation had been effected and every effort has been made, in view of the topical interest which surrounds the subject, to make it as up-to-date as possible. The opportunity was taken to discuss the problem with some of the "leading players" who conveyed a clear impression of the technique of delimitation, which it is hoped will be conveyed equally to the reader. The party which was the loser in the 1953 General Election was more than eager to put its case. Their opponents, however, were anxious that the system which returned them to power should not be shown to be "a bad thing", and considerable entertainment was derived from tracking down reluctant helpers. In the end, the required information was successfully obtained, though whether it was disclosed accidentally will ever remain a mystery.

In the early part of the work, certain minor difficulties were experienced with regard to sources. The fact that biographies provide a major source of much of the early Union history explains why comparatively little information is forthcoming regarding Natal. In connection with the National Convention, Hofmeyr's Minutes formed the basis of the material used. It was felt that the official minutes, though bare, would be more reliable, in view of the fact that no records were kept while the Convention sat of the delegates' speeches. Other works on the National Convention necessarily relied for material upon the rough notes of delegates. Cases of contradiction were found in these sources.

The writer was limited in the number of maps which could be appended. For reasons which will suggest themselves, it was decided to make a choice of the Cape. It cannot be emphasised

too strongly how difficult it is to assess the merits of the verbal reports unless the requisite maps are to hand. I am most grateful to the Parliamentary Library for allowing photographs to be taken of sections of the different maps, especially as they are not meant for public view. The original maps show in three different colours the polling districts, which are numbered, magisterial districts and electoral divisions. Reference to the maps is more tedious when there is no distinction in colour between the various boundaries, but it is hoped that the reader can make use of them as indicated in the following pages.

Statistics relating to the General Elections since Union were obtained from the invaluable little book "Verkiesingsuitslae". Considerable assistance was derived from analyses made of this book by the "Cape Times" Library.

My thanks are due to the Librarian and his assistants at the Parliamentary Library, the "Cape Times" Library, Major Jooste, the United Party Organiser for the Cape Province, members of the Nationalist Party staff and the Assistant Electoral Officer.

4. STATUTES (cont.)

The South Africa Act, 1909 (Imperial Government)

The Census Act, 1910	Act No. 2 of 1910
The Electoral Act, 1918	Act No. 12 of 1918
The Electoral Act, 1918, Amendment Act, 1926	Act No. 11 of 1926
Women's Enfranchisement Act, 1930	Act No. 18 of 1930
The Franchise Laws Amendment Act	Act No. 41 of 1931
Status of the Union Act, 1934	Act No. 69 of 1934
The Census Amendment Act, 1935	Act No. 5 of 1935
Representation of Natives Act, 1936	Act No. 12 of 1936
The Electoral Quota Act, 1937	Act No. 21 of 1937
The Electoral Laws Amendment Act, 1940	Act No. 20 of 1940
Census, Delimitation and Electoral Act, 1941	Act No. 23 of 1941
Electoral Quota Consolidation Act, 1942	Act No. 30 of 1942
Electoral Amendment Act, 1945	Act No. 10 of 1945 (New Zealand)
Electoral Laws Amendment Act, 1946	Act No. 10 of 1946
The Electoral Consolidation Act, 1946	Act No. 46 of 1946
The Electoral Laws Amendment Act, 1948	Act No. 50 of 1948
The Electoral Amendment Act, 1950	Act No. 32 of 1950 (New Zealand)
The Electoral Laws Amendment Act, 1952	Act No. 55 of 1952

5. COMMISSION REPORTS

The first South African Delimitation Commission Report was issued in the U.G. series. Reports now appear in the Government Gazettes.

First Delimitation Commission Report,	1910
Second	1913
Third	1919
Fourth	1923
Fifth	1928
Sixth	1932
Seventh	1937
Eighth	1942
Representation Commission Report,	1946 (New Zealand)
Ninth Delimitation Commission Report,	1947
Tenth	1953

6. YEARBOOKS

South African Yearbook,	1910-1916
	1910-1918
	1938
	1949
New Zealand Yearbook	1945
	1951-52

7. PROCLAMATIONS

Proclamation No. 50 of 1953

8. SOUTH AFRICAN NATIONAL CONVENTION

Minutes of Proceedings with Annexures (Selected)
of the South African National Convention. Cape Town, 191

9. MISCELLANEOUS OFFICIAL PUBLICATIONS

Aeronautical Information Publication. 1951 Edition.

S. A. R. & H. Yearly Report as at 31st March, 1952

OTHER WORKS1. BIOGRAPHIES

BUXTON, S. C. B. (Earl), General Botha, London, 1924
COLVIN, I., The Life of Jameson, London, 1922
ENGELBERG, F. V., General Louis Botha, London 1929
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6. MAPS

Map taken from The Government of South Africa, Vol. II showing the magisterial and electoral districts at the time of Union in the four colonies

Ninth Delimitation Commission Maps

Tenth Delimitation Commission Maps

Map submitted by the Nationalist Party with their plan for the delimitation of the Cape Province

Map submitted by the United Party with their plan for the delimitation of the Cape Province

ABBREVIATIONS

The following abbreviations have been employed:-

Cd. Number: In referring to Imperial Blue Books

Del. Com.: Delimitation Commission

Number and year of Acts: Title omitted

Govt. of S.A.: "Government of South Africa"

Walton: Walton's "The Inner History of the National
Convention"

L. of H.: Life of Hofmeyr

L. of M.: Life of Merriman

L. of J.: Life of Jameson

INTRODUCTION

FACTORS INFLUENCING THE FRAMERS OF THE SOUTH AFRICA ACT

The National Convention assembled at Durban on 12th October, 1908, to frame some sort of federation or union. The ideas the delegates took with them to the Convention were necessarily conditioned to a large extent by existing practices in the four colonies whose varying historical backgrounds revealed two approaches to the problem of the delimitation of constituencies, as between the Cape and Natal on the one hand and the Transvaal and the Orange River Colony on the other.

As the Mother Colony, the Cape could boast of a long period of representative government, upon the grant of which in 1852, provision was made by an Order-in-Council of the Imperial Government for the first division of the colony into electoral areas. Under this Order-in-Council dated 11th March, 1853, the Ordinance of 3rd April, 1852⁽¹⁾ for constituting a Parliament for the Colony was confirmed with certain amendments. The House of Assembly was to consist of 46 members,⁽²⁾ the Colony being divided into 22 constituencies, Cape Town returning four members and the remainder of the divisions two representatives each. The electoral divisions were set out in the Schedule to the Order-in-Council,⁽³⁾ and the provisions therefor read:-

".... the divisions of the Cape (exclusive of the city of Cape Town), Malmesbury, Stellenbosch, the Paarl, Clanwilliam, Swellendam, Caledon, George, Uitenhage, Port Elizabeth, Albany (exclusive of the town of Graham's Town), Fort Beaufort, Victoria, Albert, Somerset, Graaff-Reinet, Cradock, Colesberg, Beaufort, and Worcester and the city of Cape Town, and the town of Graham's Town, shall, respectively, be Electoral Divisions within the meaning and for the purposes of this Ordinance:"

The Colonial Legislature was given the right to amend the Con-

(1) Under which 44 seats were contemplated

(2) Section 6 of the Schedule to the O.-in-C. dated 11th March,

(3) Section 7, ibid.

1853

stitution Ordinance and, from this stage, the Cape helped to develop its own constitution by ordinary legislative acts. There was no machinery for readjusting the constituencies on a footing of equality, and they were never so readjusted on any general principle from the first division of the country into electoral units. Any modification in the system of representation and any alterations of existing boundaries had to be effected by legislation.

The issue became one of party politics, and the dual problem of representation and redistribution faced the two political parties over a considerable period. The Bond first raised the question of redistribution and brought the problem before the public notice.⁽¹⁾ In 1897, Rhodes appointed a Commission to consider the question of redistribution and a Bill, based on the minority report of the Commission, was drafted, very much in the favour of the Progressives. Hofmeyr asserted that behind the Suspensionist agitation was the desire on the part of the Progressives to settle the Redistribution question in the interim. Jameson's election manifesto of 1903 set the better representation of the people in Parliament third on the list, and a Bill to this effect was introduced soon after the new Parliament first assembled in March, 1904. The South African Party argued that the Progressives were using their parliamentary majority which rested on the disfranchisement of the rebels, to push through measures which would ensure their continuance in power when the rebels were reinstated. By 1906, the Jameson ministry was beginning to feel insecure, and the results of introducing legislation on redistribution were feared, though a section of his party was making demands in this direction.

The disparities which arose in the absence of machinery for readjusting boundaries to conform with changes in population, were aggravated by the principle originally laid down and generally accepted throughout, that the number of voters required for

(1) . Hofmeyr's Life of Hofmeyr, p. 213

a rural constituency to return a member should be less than that required for an urban constituency, because of the shifting nature of urban population and the necessity of securing representation of the permanent element in the population. The South African Party stood behind this principle that the preponderance of political power should be vested in the settled farmers and, as things stood, two voters in the country carried equal weight with three in the towns. The 1904 Additional Parliamentary Representation Act which was described as a measure for "adjusting the balance between town and country", made the moderate proposal that there should be one member for every 2,000 town electors and one member for every 1,500 country electors. Even so, Merriman called the measure "a vindictive mark of revenge"⁽¹⁾ and it was strongly resisted by the Boers.

Changes were effected by legislation in three ways. They were primarily concerned with increasing the representation of existing divisions, which brought the composition of the House of Assembly up to 107 by 1909. In 1865,⁽²⁾ 20 seats were added and additions were then made at five-yearly intervals up to 1887⁽³⁾ until a total membership of 74 was reached. Three more members were added in 1895,⁽⁴⁾ 18 in 1898⁽⁵⁾ and 12 in 1904.⁽⁶⁾

The second change involved the increase in the number of electoral divisions, so that at the time of Union the total area of the Colony, which covered 276,995 square miles, was divided into 46 electoral divisions. An illustration of such increases is provided by an Act of 1898. Part I of the Act established five new single-member constituencies and three constituencies returning two members. Thirdly, the alteration of existing boundaries was undertaken on a small scale. Here again, the Act of 1898 provides an example. Under Part III boundaries

(1) Colvin's L. of J., Vol. II, p. 242 (2) Act 3 of 1865
(3) Acts 7 of 1872, 39 of 1877, 13 of 1882 and 30 of 1887
(4) Act 4 of 1895 (5) Act 18 of 1898
(6) Act 5 of 1904

undergoing change were defined and boundaries not mentioned in any of the Schedules remained unchanged. A characteristic feature throughout was the reliance upon administrative units in any description of electoral boundaries.

All four colonies were sub-divided into many minor administrative units for judicial, fiscal, electoral and other purposes, and there were many cases of overlapping, both for administrative reasons and because of the lack of referende between government departments. Municipal government had been established in most of the towns, and under the Order-in-Council of 1853, "the boundaries of the city of Cape Town, the municipality of Green Point, and the town of Graham's Town, shall, for the purposes of this Ordinance, be the boundaries assigned to or prescribed by the municipal regulations in force for the time being in the same respectively."⁽¹⁾ The other divisions as listed in the Order-in-Council were to follow the boundaries of fiscal divisions, the areas of which often coincided with the magisterial districts⁽²⁾ which were the most important territorial unit in all four colonies. Later developments, however, often resulted in fiscal and electoral divisions ceasing to coincide since the former were liable to change by the executive, whereas the latter could only be changed by legislation. In all three Schedules of the 1898 Act, local administrative units were used to describe the areas of the respective electoral divisions, field-cornetcies, fiscal divisions and municipalities forming the basic units from which the constituencies were built up. The brevity of the definitions implied a reliance upon acquaintance with the areas of the local administrative units.⁽³⁾

The methods by which changes were effected and the results thereof proved highly inadequate. The legislators looked mainly to increased representation to provide the remedy. This means

(1) Section 7 (2) 89 magisterial districts in the Cape in 1909
(3) First Schedule, Act 19 of 1898: "Cathcart Fiscal Divisions of Cathcart and Stutterheim".

suggested itself as there was no limit set on the composition of the House of Assembly. The most notable effect of this was the disproportionate size of the Lower Chamber which hampered business. In 1898, five divisions were given one extra member and Port Elizabeth was given two additional members, but no accurate remedy lay in this approach, though inequalities were made somewhat less glaring. The other provisions of this Act made it clear that this point was appreciated at the time, but even so, in 1904,⁽¹⁾ the same practice was followed and twelve additional members were given to urban areas.⁽²⁾ Jameson felt that the Act ensured that the grossly under-represented constituencies were given herein a certain measure of redress, and he hoped that the House would at a later date be in a position to deal with the wider problem involved and that a comprehensive redistribution measure would be introduced.

The basis of representation was the number of people in each constituency who had the qualifications required by law and in 1907, there were 151,314 voters on the roll, which meant on a strict mathematical basis, 1,414 voters per member. Even allowing a deviation from norm of approximately 20 per cent., only 21 constituencies were fairly represented, 18 were over-represented⁽³⁾ and 7 under-represented.⁽⁴⁾ Not only was disproportion evident on a basis of equal numbers of voters, but the divisions as existing were not justified on geographical grounds.⁽⁵⁾ Though the publication of the new register in 1907 proved the necessity for effective redistribution measures, by this date Jameson felt that redistribution should be left in abeyance until closer union was accomplished. No reform as sweeping as that embodied in the 1909 constitution could ever have passed the Cape Parliament as a local measure.

Additional Parliamentary Representation

- (1) Section 3 of the A P R Act, 1904
- (2) See Second and Third Schedules of the Additional Parliamentary Representation Act, 1904. 10 divisions were increased by one member and one by two members.
- (3) Govt. of S.A. Vol. II, pp. 406-7, provides examples, such as Victoria East - 445 registered voters; Mafeking - 587; Vryburg - 779; Fort Beaufort - 926.
- (4) Ibid., Woodstock 2,691; Cape Town 2,195; Kimberley 2,168; East London 2,063
- (5) An example of this is provided by Uniondale, half of which was classified with George and the other half with Oudtshoorn.

The Act of Union commended itself to many people in Natal ^{very} on the/grounds that it constituted a sweeping reform of the system of representation. Comparisons could be drawn between conditions in the Cape and Natal which possibly derived from the fact that the areas which formed the divisions dated back to the same decade. In both colonies, the system existing was the result of the haphazard growth of the constitution. Natal covered an area of 35,371 square miles, and at the time of Union the Colony was divided into 17 electoral districts among which 46 members of the Lower House were distributed. There was no recognition of the principle of equal constituencies or any provision for redistribution. The constituencies could not be condoned either from a geographical or statistical point of view. Maps of the Colony reveal certain internal areas called counties, whose existence was probably to be ascribed to the fact that when the colony was first occupied, it was prematurely divided before the experience necessary to show what districts would prove the most convenient had been gained. Up to 1910, the counties survived owing chiefly to certain provisions of the Natal Constitution which preserved them for parliamentary purposes. The magisterial districts, ⁽¹⁾ which were better suited to geographical conditions and popular convenience, had superseded for all practical purposes the county divisions. The gross inequalities in representation in Natal were largely due to no attempt having been made when settlement began to make the unit of government conform with natural conditions. When Zululand was given representation in 1903, an attempt was made to make the electoral districts' dividing boundary conform with natural conditions. From statistics available before the passage of the 1908 Act, marked disparities were apparent as between the different constituencies. Durban Borough had 1,500 registered voters to a member, and this was the highest figure for any constituency.

(1) Of which there were 40

At the other extreme was Alfred County with 195 registered voters for each of its two members. ⁽¹⁾

Under the Constitution Act of 3rd July, 1893, ⁽²⁾ provision was made for the establishment of Responsible Government in Natal. Up to this time, there had been a unicameral legislature in the form of a Legislative Council. By provision of this Act, a Legislative Assembly was to be elected, consisting of 37 members chosen by the electors of ten electoral districts. ⁽³⁾ The boundaries of the ten districts were not defined in the Act, since the component units were familiar, having formed the basis of elections to the Legislative Council. The formation of these districts dated back to 1856, when it was laid down ⁽⁴⁾ "we do

(1) Govt of S.A., Vol. II, p. 409

(2) Law No. 14 of 1893

(3) Section 22, Law No. 14 of 1893, which read:- "The Legislative Assembly shall consist of thirty-seven Members, who shall be chosen by the Electors of the following Electoral Districts:-

Pietermaritzburg City	...	4
Pietermaritzburg County -		
Umgeni Division	...	2
Lion's River	...	2
Ixopo	...	2
Durban Borough	...	4
" County	...	3
Victoria County	...	4
Umvoti	"	3
Weenen	"	3
Klip River County -		
Klip River Division	...	3
Newcastle	"	3
Alexandra County	...	2
Alfred	"	2

(4) Section 53 of Letters Patent dated 15th July, 1856

hereby give and grant to our Governor, for the time being, of Our said Colony of Natal, full power and authority, with the advice and consent of Our said Executive Council to issue a Proclamation or Proclamations dividing Our said Colony into counties, wards, and townships, and to appoint the limits thereof respectively." Accordingly, by law and proclamation, electoral divisions were delimited and alterations were made to their boundaries from time to time.⁽¹⁾

Section 10 of Law 28 of 1887⁽²⁾ is indicative of the methods in use for setting out electoral districts and modifying the same and this practice was continued after 1893 in the absence of any alternative constitutional provisions.

Three Parliamentary representation acts,⁽³⁾ of 1898, 1903 and 1908 respectively, were passed up to the time of Union. In 1898,⁽⁴⁾ the number of members of the Legislative Assembly was increased to 39, and in 1903⁽⁵⁾ to 43 members. The two former Acts each followed the acquisition of additional territory by Natal in 1897 and 1902 respectively. In 1898 the province of Zululand was divided into two electoral districts each returning one member, and in 1903, the Northern Districts was divided into two electoral districts called Vryheid and Utrecht electoral districts, bounded as set forth in the Schedule to the Act, each returning two members.⁽⁶⁾ (fn = Section 5)

No such acquisition had taken place before the passage of the 1908 Act which was to alter certain electoral districts and

(1) Law No. 1 of 1873, 12th July, 1873, "To readjust the electoral divisions of the Colony of Natal"

Law No. 1 of 1883 dated 29th March, 1883, increased the elective members from 20 to 23

Law No. 28 of 1887 dated 9th March, 1887, altered and subdivided the Electoral District of Pietermaritzburg County into the three Electoral Districts of Umgeni, Lion's River and Ixopo

Law No. 5 of 1889 dated 25th June, 1889, the electoral district of the counties of Alexandra and Alfred was formed into two electoral districts.

(2) "The Governor in Council may specify and determine the boundaries of such Electoral Districts respectively by proclamation in the 'Government Gazette' ... and the new Electoral District of Umgeni shall be composed of and shall extend over the said Wards No. 1 and No. 6 of the said County of Pietermaritzburg."

(3) Act No. 10 of 1898; Act No. 3 of 1903; Act No. 40 of 1908

(4) Under Section 4 of Act No. 10 of 1898

(5) Under Section 4 of Act No. 3 of 1903

to provide for increased representation thereof in Parliament. Opposition to this Act was on the grounds that it was not a true measure of redistribution. A further Representation Act had been contemplated in 1909 to increase the representation of Durban and Newcastle Divisions. Under the 1908 Act, the electoral districts of Durban and Newcastle as defined by Proclamations dated 23rd May, 1874 and 7th June 1898 respectively were abolished on the grounds that they were grossly under-represented. Six electoral districts were to replace Durban and to bear the names of Durban East, Durban South, Durban South West, Durban Central, Durban West and Durban North, with one member for each electoral district. The two electoral divisions of Newcastle and Dundee were to replace the former Newcastle and to return two members each. The boundary of Klip River district was altered by the loss of a portion of its area to Dundee. The boundaries of the nine divisions named in the Act were set forth in the Schedule thereto. It was not necessary for any member of the Legislative Assembly to vacate his seat by reason of the passing of this Act, during the continuance of the existing Parliament.

By the time of Union, there was an appreciation of the anomalies under the existing system. The only remedy therefor was by legislation and, as a result, this was only likely to be effected when the party drawing its support from the under-represented areas was in power. This made the problem a party issue in Natal as in the Cape. The changes made were inadequate in so far as they affected isolated divisions for the most part, where defects were most glaring, without any overall plan being devised. It is likely that some crisis would have arisen in both colonies had not the issue been dealt with by the Act of Union.

While the systems in the Cape and Natal had developed over half a century, those in existence in the Transvaal⁽¹⁾ and the Orange River Colony at the time of Union were of recent develop-

(1) The Transvaal Constitution was drafted by a Royal Commission, with West-Ridgeway as Chairman, which started work in Pretoria in May, 1906. Its primary attention was given to delimitation.

ment, and represented a clean sweep that had been made possible by events following on the Anglo-Boer War. It is most general in constitutional practice to leave details of the electoral system, the distribution of seats and alterations to electoral boundaries to be regulated by ordinary laws and to become embodied on occasion in organic laws. These provisions are of fundamental importance in the working of a constitution, yet they are mostly developed and modified without change by formal amendment of the constitution. It has been seen how ordinary legislative acts governed such practice in the Cape and Natal, but the two younger colonies were provided with detailed instructions set out in their Constitutions. The salient features of the Transvaal Constitution suggest more contrasts than comparisons with Cape and Natal practices.

One striking similarity was provided by the emphasis upon magisterial districts and to a lesser extent, other local administrative units, which was largely unconscious in the Cape and Natal but deliberate with regard to the Transvaal. The first allocation of seats was arbitrary. Schedule I set out the number of members to be allotted to each magisterial district.⁽¹⁾ The Commissioners were to divide the magisterial district of the Witwatersrand into five parts, having regard in so doing to existing administrative areas. Each of the said five parts was for delimitation purposes treated as a magisterial district. It was attempted to make electoral divisions follow recognised administrative boundaries and to enable this the more easily to be done,

(1) Section 1, Schedule I, Cd. 3250, which read:-

"Members of the Legislative Assembly shall be allotted to each magisterial district of the Colony as at present defined as follows:-

Barberton	...	...	1	Standerton	...	...	2
Lydenburg	...	...	2	Wakkerstroom	...	...	2
Ermelo	...	...	2	Pretoria - Urban	...	..6	
Heidelberg	...	..	2	Dist. other than ur.	3	9	
Lichtenburg	...	..	1	Waterberg	...	..	1
Marico	...	...	1	Wolmaransstad	...	...	2
Middelburg	...	...	2	Zoutpansberg	...	...	2
Potchefstroom -Munip'yl				Witwatersrand	...	...	34
Dist. excl. Municip'y	3	4					
Rustenburg	...	...	2	Total			69

an electoral division could differ as much as fifteen per cent. from the quota of the part, magisterial district or municipality in which it was situated. The first factor to which the Commissioners were to give due consideration when delimiting constituencies was existing boundaries of municipal and magisterial wards, and the boundaries of old magisterial districts included in existing magisterial districts.⁽¹⁾ Where magisterial districts had to be divided into single-member constituencies, the division was to follow as far as possible the boundaries of the field-cornetries. This provision showed an appreciation of the importance of framing units which had practical significance.

The most striking departure on the other hand was the acceptance of the principle of equal electoral districts which was adhered to in a modified way. The Transvaal covered an area of 111,196 square miles and, in 1906, was divided into 69 single-member constituencies. With 34 seats to the Rand, 6 to Pretoria and 29 to the rest of the country,⁽²⁾ the distribution followed closely the arithmetical proportions except that one extra seat was given to the Rand in view of the increase in population since the taking of the census in 1904. The Commissioners were to divide each of the five parts into which the Witwatersrand had been divided, and each magisterial district and municipality to which more than one member was allotted, into single-member electoral divisions which, subject to certain conditions, were to contain a number of voters as nearly as possible equal to the quota for such part, district or municipality respectively. The quota of an area was found by dividing the number of voters in the part, district or municipality in question by the number of

(1) Schedule I, Section 3(a), Cd. 3250

(2) cf. how the Delimitation Commissions after Union dealt with the Transvaal in these three sections.

members of the House of Assembly allotted to such part. The principle of equal electoral districts was strictly adhered to in many instances in the application of these provisions, as the number of registered voters per constituency in 1906 indicates.⁽¹⁾ The prior allocation of members among the magisterial districts, however, removed any possibility of a strict overall numerical equality. The colonial quota stood at 1,527.⁽²⁾ 25 seats were under the quota and 44 exceeded it. A comparison in the number of voters in South Lydenburg and South West Pretoria revealed a difference of 717. Such disparities were partly due to the fact that other than statistical requirements had also to be conformed with. Not only was consideration to be given to existing boundaries, but due regard was to be paid to community or diversity of interest, means of communication and physical features. That the observance of existing boundaries was considered of greater importance than the statistical factor is illustrated by the fifteen per cent. allowance. The reason for this could lie in the fact that the administrative units in the Transvaal were working well, and their retention for electoral purposes might assist the Boers in more quickly adapting themselves to party government, with which they were unfamiliar.

The adoption of the principle of equal electoral areas was naturally accompanied by a scheme for automatic redistribution by independent commissioners. Having decided upon single-member constituencies, all idea of meeting increasing population needs by granting additional membership to existing divisions was overruled and it was in keeping with the democratic principle here applied to give attention to redistribution. In attempting to

(1) The following examples illustrate this point:-

Lydenburg Magisterial district:-		(North Lydenburg ..	1,086
		(South Lydenburg ..	1,043
Wakkerstroom " " :-	(Volksrust ...	1,264	
	(Wakkerstroom ..	1,227	
Witwatersrand - Part I (West Rand)		(Randfontein ..	1,509
		(Krugersdorp ..	1,547
		(Roodepoort ...	1,563
		(Maraisburg ...	1,549
		(Witwatersberg ..	1,573

See pages 412-3, Govt. of S.A.,
Vol. II

(2) Number of voters - 105,368 - divided by the number of seats

give to each vote an equal value, it was clearly necessary to set the redelimitations above party, and this was considered particularly important in the Transvaal because, as a result of the war, parties were divided on racial lines.

For the first delimitation, three Commissioners were appointed by the Governor in accordance with the instructions set forth in the First Schedule of the Letters Patent. The starting point in their labours was to divide the magisterial districts into constituencies, the number of which to each magisterial district being arbitrarily set out in the Constitution. They defined and named the various electoral divisions, and a list thereof was published by the Governor in the Gazette. After every alternate biennial registration of voters, the colony was to be re-divided into electoral divisions for the purpose of the election of members of the Legislative Assembly.⁽¹⁾ This meant that at four-yearly intervals, an independent commission of three was to be appointed by the Governor in Council to revise the constituencies. The commissioners were to proceed in accordance with the regulations prescribed in the Third Schedule,⁽²⁾ and the divisions were to be readjusted in such a manner as to secure as far as possible that each constituency contained an approximately equal number of voters. They were to submit to the Governor in Council a list of electoral divisions with the names given thereto, a description of the boundaries of every such division, maps showing the electoral divisions and any further particulars they might consider necessary. In the event of any discrepancy arising between the description of the divisions and the maps, the description was to prevail.⁽³⁾ The preparation of maps represented an innovation in practice, and the provision in general aimed at specific descriptions of boundaries being provided and embodied in a report.

The provisions for four-yearly delimitations⁽⁴⁾ departed

(1) Section XIV, Cd. 3250
(3) Section XVI, Cd. 3250

(2) Section XV, Ibid.
(4) Schedule III, Ibid.

slightly from the instructions set out for the first delimitation, as provision was made for a further allocation of seats as well as a redivision on the same lines. The commissioners were to give consideration to existing boundaries of municipal and magisterial wards, community of interest and means of communication, the clause regarding physical features being omitted after the first delimitation. The number of electoral divisions could be increased in so far as the total number of voters exceeded the total number of voters at the first division by an amount equal to the quota of the Colony or some whole multiple thereof. The electoral divisions were to be increased in number in proportion to such excess. There was the proviso that the electoral divisions were not to exceed 75 or fall below the number existing at the date of such redivision. In effecting a redivision, the commissioners were first to allot members to the three areas of the Witwatersrand Magisterial district, Pretoria urban area and the remainder of the Colony and find the quota of each area,⁽¹⁾ first making the allotment to the latter area and then to the five parts of the Witwatersrand Magisterial district. Any number of voters equalling from one half to one and ^ahalf times the area quota were to form one electoral division, and a number not less than one and a half times but under two and a half times the quota was to return two members and so on, provided that the commissioners kept within the bounds of the number of electoral divisions for the area concerned. All magisterial districts of the three areas were to be divided into as many electoral divisions as there were members allotted to such districts.

Certain provisions were made with regard to the first⁽²⁾ and any succeeding delimitations⁽³⁾ for adequate urban representation, which represented a marked contrast from Cape and Natal practice. Where the number of voters warranted it, municipalities were to be made into electoral districts. If

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- (1) Section 3, Schedule III, Ibid. The quotient obtained by dividing the number of voters in each such area by the number of members to which it is entitled, is the quota.
(2) Section 3, sub-section 4, Schedule I, Ibid.
(3) Section 9, Schedule III, Ibid.

the number of voters was not equal to the quota of the district, the whole of such municipality was to be included in one electoral division.

Selborne did his best to safeguard the interests of the British community in the Transvaal by insisting that there should be no preference in the distribution of the new constituencies for the country areas as against the urban areas. When representative government was contemplated in 1904, the Imperial Government fully considered the possibility of preserving the old constituencies while adding new ones to them, but an examination of the results of current census figures revealed very serious inequalities between them. The whole policy of the late South African Republics had been in the direction of giving altogether disproportionate power to the country population, of which striking proof is afforded by the disfranchisement of towns in 1886. In the last year of the Republic, Johannesburg had only one representative and a population of 76,500 whereas Rustenburg and Lydenburg had two members each, with populations of 13,000 and 3,500 respectively. It was felt that the adoption of the numerical principle would diminish the antagonism between town and country and secure to the urban electorate, who were mainly British, a fair share of representation. In a new country in which there were no constituencies with a long historical background, it was difficult to justify the perpetuation of an electoral system which allowed such inequalities. The industrial and economic conditions of the Transvaal made it desirable to have some better means of ascertaining the views of the different sections of the population than the existing system afforded. There was no reference in the Constitution that the fifteen per cent. allowance was to benefit either the rural or urban population, in particular, and the Constitution was in force for so short a period that one cannot generalise on the application thereof.

The Orange River Colony was given a new Constitution in 1907, the year following that in which the Transvaal had received responsible government. Perhaps its most noteworthy feature was the separate representation of the towns. By 1907, municipal government had been established in most of the principal towns and Village Management Boards established under general municipal acts. The allocation of seats was on the results of the 1904 census, with the exception that five members were allotted to Bloemfontein town to allow for an increase of population since that time. In all, 11 of the 38 seats in the Legislative Assembly were to go to the towns.⁽¹⁾ Certain of the smaller towns which would otherwise have been swamped by the country vote in their respective districts, were grouped together in such a way as to obtain representation.⁽²⁾ Statistics of registered voters as at 1907 reveal an over-representation of the urban areas.⁽³⁾ Though the quota of the Colony was 954, the Eastern Towns had a total of 701 registered voters, the Mining Towns 745, Harrismith Town had 531 voters, the Northern Towns 556, Kroonstad Town 644, the Midland Towns 599 voters and the five Bloemfontein urban seats revealed the following figures, namely 605, 581, 547, 601 and 573 respectively.

The second most characteristic feature of the Constitution followed Transvaal precedent. The existing boundaries of magisterial districts were retained for electoral purposes. Only five magisterial districts were allotted more than one member. Four of these were divided into two-member districts and the fifth, Bloemfontein urban district, was divided into five constituencies. Where a magisterial district or town returned more than one member, each electoral division was to

(1) Section 1, Schedule I, Cd. 3526

(2) Bethlehem, Fouriesberg and Ficksburg ... one member
 Jagersfontein and Koffyfontein " "
 Parys, Vredefort and Heilbron " "
 Ladybrand and Thaba 'Nchu " "

(3) Covt. of S.A., Vol. II, p. 411

contain a number of voters as nearly as could be equal to the quota for such district or town respectively.⁽¹⁾ For the first division, the four magisterial districts to each of which two members were allotted, showed the following figures.⁽²⁾ There were 1,308 and 1,208 registered voters in Bloemfontein North and South respectively, 994 and 1,038 in Kroonstad East and West, 798 and 791 in Rouxville East and West and 1,072 and 1,165 in Winburg North and South. All eight constituencies mentioned were rural seats, and the number of voters in each indicated that the provisions of Section 2(a) had been given effect to. Between the different magisterial districts represented by one member, there were often large discrepancies in the number of voters contained therein, as illustrated by the two rural constituencies of Philippolis and Fauresmith-Jacobsdal with 613 and 1,757 registered voters respectively.

The provisions in respect of the distribution of seats were similar to those in the Transvaal, the treatment of the urban areas excepted. The Orange River Colony covered an area of 50,392 square miles and was divided into 38 electoral districts. For the first division, the allocation of seats was arbitrary in that Section 1 of Schedule I set out the number of members to be allotted to each magisterial district. Upon the completion of the list of qualified voters, three commissioners were to be appointed by the Governor to proceed in accordance with the Regulations as set out in the First Schedule to the Letters Patent. The powers and duties of the commission corresponded with those of the Transvaal commission. For the purpose of redivisions, appointment was by the Governor in Council. Very elaborate provisions were set out in Schedule III for the automatic redistribution every four years so as to adjust divisions to changes of population. Any alteration of boundaries was to

(1) Section 2(a), Schedule I, Cd. 3526

(2) In 1907

take effect at the succeeding general election, and the number of electoral divisions in the Orange River Colony was in no case to exceed forty.

In effecting a redivision, the commissioners were to ascertain the number of voters in the total area of the Colony, exclusive of any towns existing therein at the date of redivision, and secondly in the total area of any towns existing therein at that date. They were to allot to each such area a number of members of the Legislative Assembly proportionate to the number of voters therein and to work out a quota for each area. A deviation from the area quota was allowed to enable the basis of representation to be the magisterial divisions and towns or groups of towns in that if the number of voters in any of the above-mentioned areas was not less than half the quota of voters for such an area but less than one and a half times the quota, one member was to be returned for such district or town. If the number of voters in any magisterial district or town was less than half of the quota of voters for the area, no member was to be returned by such a district or town. A district was to be included in an adjoining district and a town to be grouped with such other neighbouring town or towns as the commissioners might determine.

Four factors⁽¹⁾ were also to be given due consideration by the first and succeeding commissions. As with the Transvaal, prior place was given to the clause concerning existing boundaries, in this case of towns, municipal and magisterial wards and the boundaries of old magisterial districts included in existing magisterial districts. Community or diversity of interest, means of communication and physical features were the other factors binding the decisions of the respective commissions.

It would then appear that in the four colonies there were in existence two practices, one old and one new. Two conflic-

(1) Section 2(c), Schedule I, Cd. 3526

ting doctrines were behind these systems, and the decision with regard to the Union Constitution might possibly turn on the issue as to how many adherents had been won over to the new ideas which had been given effect to for so short a period and planted in such foreign ground. The fact that this period of practical knowledge of the new scheme was indeed brief, might be offset by the fact that the task of constitution-making had been very much before the public eye in the Transvaal in the decade preceding Union. The ideas provided therein might exert considerable influence when the Union Constitution was under discussion, for a constitution is largely the result of political, economic and social forces operating at the time of its adoption. Constitutions embody the interests and opinions of their framers in so far as the framers think they will be accepted by the bodies competent to adopt them. The "stake in the country" theory of representation which had formed the basis of constitutional practice in the four colonies until 1906 and 1907, had resulted in the maldistribution of seats. This theory and practice had been challenged by the principle that every male citizen had a natural right to participate in government and that all men were entitled to equal votes. Certain practices were in existence whereby constituencies could be formed to give effect to this principle.

In establishing a system for the delimitation of constituencies, the problem to be solved is how best can an exact reflection of the various shades of interest and opinion be obtained. A system whereby the whole nation was taken as a single constituency would provide a perfect mirror of majority and minority groups. In default of this arrangement, the course open for adoption is the division of the country into constituencies sized according to convenience and equity.⁽¹⁾ The general idea is that from each geographical point a representative must be sent and the whole territory is envisaged as falling into districts convenient for

(1) Finer Theory and Practice of Modern Government, p. 910.

registration and polling purposes.

Convenience implies that the constituency should not be too large for the maintenance of personal contact between the candidates and the voters, and between local party associations and their supporters in the vicinity. The size of electoral districts strongly affects the nature of election campaigns and the psychological nature of representation. In practice, the whole relation between constituents and members is governed by political party organisation, and the extent of the divisions depends upon the size of Parliament, the struggle of parties for special advantage in their own strong districts and partly upon the desire to represent already existing entities as cities, towns and local government units. Equity implies that the constituencies should be as nearly equal in population as possible, if the principle that the state is made up of equal citizens is accepted. Any group of citizens was equal to any other provided it was numerically the same. When this principle is applied continuously as the distribution of population changes, and applied without management, taken over a period, there will be no undue advantage or disadvantage to any party.

With regard to the area of the divisions, the practical question arises as to whether there ought to be one or more seats per constituency. The problem raised by single-member constituencies differs as the majority required is absolute or relative. Where only a relative majority is required, the results may be inequitable if more than two candidates compete for a seat. The luck of the game may fall to either side, but constitutional development has shown that men prefer a controllable principle. In devising a new constitution, there arises the further issue as to whether the framers would be so unfair as deliberately to produce or maintain inequitable electoral districts. Partly on the grounds of the charges of unfairness that in practice are aimed at the different expressions of opinion, written constitutions establish only the general principles of government. Agreement could seldom be reached on fundamentals

were they not so vague that all objections could be covered.

The provisions of the Transvaal and Orange River Colony Constitutions had approximated in some respects to the theoretical ideal based on modern democratic standards and the precedent here established, along with whatever guidance theory could provide, might indicate to the delegates to the National Convention a line of policy to be adopted.

CHAPTER ONE

EVERYTHING AUGURS WELL FOR UNION

Previous attempts at a form of union had resulted largely from external impetus, but the successful attempt had its origin within the four colonies themselves. It was promoted by many men of vision who foresaw a great future for a united South Africa. Although the area of the country is large, its physical characteristics are uniform and there are no natural barriers between one part and another. The population formed one body politic. The Boers of the Cape and the Transvaal were similar in character and ideas, and the inhabitants of the different towns were connected by ties of blood and friendship. In the Cape Colony and the Transvaal the Dutch and the English were living side by side and to a lesser extent in the Orange River Colony and Natal.

The first practical step towards Union was made at the Railways and Customs Conference at Pretoria which met on 4th May, 1908.⁽¹⁾ When no agreement could be reached, Smuts moved six resolutions, which were adopted on the 8th May, which prescribed the procedure for attaining immediate Union. The Resolutions defined the constitution of the National Convention, fixed the representation of each Colony and the method of voting and made provision for Rhodesia to be admitted.⁽²⁾ The six resolutions were duly confirmed by the four Parliaments and delegates were appointed, twelve for the Cape, eight for the Transvaal and five each for Natal and the Orange River Colony.⁽³⁾ Three Rhodesian delegates were appointed shortly before the Convention was opened at Durban on 12th October, 1908. Its deliberations were not terminated until the Bloemfontein session

(1) The course of the Conference had been previously planned by Smuts and Merriman

(2) With the right to speak but not to vote

(3) See Appendix 1

ended on 11th May, 1909.

The delegates to the National Convention reflected the preponderance of farmers - always thought to be conservative⁽¹⁾ - and lawyers, which was noticeable in South African contemporary politics. The South African Dutch have always been a rural people, while those who made their livings in the towns were usually more prominent in the legal and clerical professions and in the civil service than in commerce, mining or industry. Of the thirty-three delegates, approximately one-third were farmers. Sir Frederick Moor was a farmer and had the rural bias in politics which made him persona grata at Pretoria. In addition, Smarrt and Fitzpatrick had farming interests and Smuts, Hull and De Villiers were directly interested. There was only one prominent trader on the Convention, namely J. W. Jagger, and Farrar and Fitzpatrick alone had^{had} any responsibility for controlling the gold-mining industry. Two journalists and three ex-officials were also included, but there was a conspicuous absence of university men. The prominence of farmers had as a natural corollary that the two white peoples were not equally represented. Excluding the Orange River Colony and Natal, in which the overwhelming Dutch predominance of one was counter-balanced by the equally British composition of the other, the delegates from the Cape and the Transvaal comprised twelve Afrikaners as against eight Progressives.

Approximately two-thirds of the delegates had fought in the Anglo-Boer War, and among these were trusted Dutch leaders such as Botha, Steyn, Smuts, De la Rey and De Wet. As the National Convention progressed, Botha's claim to be the first Prime Minister was undisputed. He had breadth of vision and a fine knowledge of human nature, and one of his reasons for supporting Union was as a step towards the consolidation of the two white races. Steyn held a unique position in the

(1) cf. the more democratic Commonwealth Constitution, and the composition of the body framing it.

Orange River Colony, where his influence was tremendous, and Smuts's intellectual ability soon singled him out. But Chief Justice de Villiers had the greatest reputation of them all. When he was appointed Chief Justice in 1873, he told his constituents that he was leaving politics, but he did not do so because he enjoyed political life and was in touch with politicians and officials who often sought his advice.

The English-speaking element in South Africa had little of the first quality to set against these famous men. They were impoverished as far as political power went, having lost their previous privileged position when the gold magnates had been driven off. The leaders of the British element recognised that if Union was to come about, it would have to be under Afrikaner auspices, though it was certain that union could not be effected without their co-operation. Farrar and Fitzpatrick were not of the same class as Botha and Smuts, and Natal had no eminent representative. Walton's qualities did not equip him for leadership. In all, Jameson was the only outstanding figure on the British side. One opinion given is that it says much for Jameson's ability that the Union Constitution was so little unfavourable to British claims.⁽¹⁾ Jameson himself, however, rarely thought along racial lines, and while Prime Minister had continued Rhodes' policy of friendship with the Dutch farmers. The leaders throughout the Convention were Botha and Smuts from the north, and Merriman and Jameson from the south. Two notable absentees were Schreiner and Hofmeyr, who exerted external pressure on the course of events.

Not only did the Dutch have the advantage in personnel, but in respect of their advisers also. Although Smuts had been a harsh critic of the Milner Administration before Botha and he came into power, he understood how good the material was which Milner had brought from England to fill the main posts.

(1) Long's Drummond Chaplin, p. 136.

He took over picked men from the Milner staff and set them to work on the framework of the new constitution⁽¹⁾ which the National Convention would have to shape. Smuts took P. Duncan with him to Durban and Cape Town as one of his two Law Advisers and Philip Kerr and R. H. Brand were his confidential secretaries for Convention purposes. Smuts laboured with this brilliant staff before the Convention met in Durban to have a draft constitution ready. Every important matter was thoroughly discussed by the delegation as a whole, with the consequence that they arrived at Durban united. Smuts went to the first meeting with the draft in his pocket plus a store of accumulated knowledge about other similar constitutions. As a rule, it fell to the Transvaal delegates to make proposals and to the others to make amendments. The solid front presented by the Dutch and British⁽²⁾ of the Transvaal delegation had major importance on the result and greatly improved the chances of success. As things stood, the superior Dutch membership was reinforced by English brains.⁽³⁾

Race at the time of Union was almost entirely synonymous with party. This was wholly true in the Orange River Colony, broadly true in the Cape and the Transvaal, whereas Natal would go over to any party from which the most gain was to be had.⁽⁴⁾ The outlook of the various political parties in the four colonies revealed the different political beliefs between the two racial groups.

There was an Afrikaner revival after the Boer War in which the Cape led the way. At the time of Union, three political parties absorbed the majority of this racial group. The South African Party in the Cape consisted of two fairly harmonious parts, namely the more moderate English-speaking section headed by Merriman, and the Bond which was primarily a Dutch farmers' asso-

(1) Largely the work of the Curtis group

(2) The Transvaal Progressives and Het Volk had formed a prior agreement with one another.

(3) Long's Drummond Chaplin, p. 139.

(4) Ibid, p.140.

ciation, under the presidentship of Theron. The latter group had the support of the extremists of the party. The Bond was the only really cohesive political force in the Cape. There was no doubt as to its policy, which it did not lack leaders to direct. It was mainly interested in ensuring that the Dutch section of the population did not suffer any disadvantage as compared with the British, and was therefore more concerned with the welfare of the country districts than of the large towns. After the Jameson Raid, the Bond had closed its ranks and became first and foremost the Afrikaner Bond. It stood for the "landed and producing interests". It was opposed to any change which would weaken its party. Botha was largely responsible for the formation of the Het Volk party in the Transvaal in 1904, which aimed at delivering South Africa from the political domination of the Gold Mines. The Unie Orangia was formed shortly afterwards in the Orange River Colony. Implicit trust in a proved leader is part of the Afrikaner's national make-up, so little opposition was likely to be given by the rank and file to the policy adopted by their leaders towards Union.

Against these groups, were the Progressives in the Cape and Transvaal and the Colony of Natal. The Progressive farmers in the Cape held political views more in conformity with those of the Bondⁱⁿ that they were opposed to increasing the political power of the towns, whereas the Transvaal Progressives⁽¹⁾ stood firm by the principle of "equal rights" and some feared that the design of the Dutch for predominance lay behind the closer union plan. Political divisions in Natal fell more or less into two similar groups, though without so much of the racial aspect.

The South African Party in the Cape was determined that federation should not come while the Unionist Ministry was in power, and on the other hand, it had been Milner's intention to wait for federation until the British section was strong

(1) Formed under Farrar when the mass of urban British accepted the Lyttelton scheme

enough to write the federal constitution. By the end of 1906, it was clear that the British would never be in a position to dictate a constitution, though it seemed that the Afrikanders would soon be in a position to do so. When on 23rd July, 1907, Jameson seconded Malan's resolution regarding closer union, it was revealed that the British element were prepared to support a Union introduced by the Dutch.

Jameson's Parliament was dissolved on 19th September, 1907, and Smuts wrote to Merriman that South African affairs would turn on the latter's victory in the Cape. In such an event, the opportunity would be grasped to unite South Africa. Shortly afterwards, the set-up inside and outside South Africa was propitious. In November, 1907, Fischer became Prime Minister of the Orange River Colony and Hertzog Attorney-General and Director of Education. In Natal, there was a well-disposed government, and the Afrikanders had a majority in the Transvaal but not a stable one. When Merriman became Prime Minister of the Cape on 3rd February, 1908, the Cape, Orange River Colony and the Transvaal were all more or less completely under Afrikaner control. The final factor was that there was a liberal government in Britain which also favoured South African federation or union.

From the time of the Pretoria Conference until the National Convention met, the leading figures continued to thrash out the main principles on which they hoped to reach agreement behind the scenes. As early as 24th February, 1908, Merriman had sent to Smuts a draft of his ideas on union and in a letter in the following July, he stated that he regretted the acceptance of manhood suffrage in the Transvaal and the Orange River Colony as he regarded it to be "the most anti-liberal among all the idols of the modern market-place".⁽¹⁾ On 6th August, 1908, Botha

(1) Lawrence's Life of Merriman, p. 271

wrote to Merriman for his opinion on the representation principle of one vote one value, and informing him that certain parties were prepared to go any lengths for it in the Convention. Botha himself feared the election results in Natal and the Cape if the principle was adopted. Replying on 17th August, Merriman stated his opposition to the system. He favoured a high franchise with no exclusion on racial grounds of anyone who could reach it. He believed that the balance of power should be in the hands of the landed interest, and attributed the financial ruin of the Cape to government by the floating population of the towns. Merriman did not doubt that there was Capitalist influence behind the one vote one value agitation. For the distribution of seats in the Assembly, Merriman felt that some rule-of-thumb method would have to be adopted, and he regarded any scheme for automatic redistribution as a failure to obtain a unified people, and would result in local divisions being perpetuated.

Merriman studied the Canadian and Australian Constitutions, but in the main his ideas were governed by Cape practice, where wealth, population, area and the native population had all been deciding factors. He hoped that distribution of members would be in respect of population and not based on the voters' rolls, as this would throw power into the hands of the large urban communities, which were chiefly non-South African. He instanced how Australia was governed by its large cities. "I can conceive no greater misfortune for South Africa, with its overwhelming native population, than a reproduction of Australian conditions, in which a white democracy, without any of the responsibilities that land-holding confers, should dominate our policy."⁽¹⁾ It was his view that people urging democratic principles really "wished to see the Capitalist from overseas the master instead of the man on the land".

Meanwhile, Smuts was carefully studying steps taken by the United States, Canada and Australia to secure federation. At

(1) L. of M., p. 276

the end of August, 1908, Smuts circulated his memorandum on Closer Union. If its main ideas were approved, he expressed his willingness to proceed with the drafting of a constitution, but he was anxious for criticism of his proposals. In his reply, Merriman remarked how the system of large constituencies for returning senators in the Cape had not worked well. He went on to say: "The mode of distributing the seats in the Assembly and the Franchise are both highly contentious matters upon which it is difficult to lay down hard and fast rules."⁽¹⁾

In despatching his draft scheme⁽²⁾ to De Villiers, Smuts said that to base representation on the total population or the number of registered voters would be "tantamount to the annexation by the Cape Colony of the rest of South Africa".⁽³⁾ His scheme favoured the members of both Houses being elected under proportional representation to protect minority rights. De Villiers expressed his pleasure that Smuts favoured proportional representation. Jameson, on the other hand, held that it was an experiment and a fad and quite unsuited to the Cape's scattered community. Smuts' scheme also suggested that a special commission was to mark out electoral areas on the basis of population, thereby avoiding gerrymandering. Redistribution was to take place every five or ten years according as the census was taken. Smuts was looking to a semi-federal constitution which might in the course of time become completely unitary. De Villiers thought that Smuts had weighted the scales too heavily against the Cape and favoured a closer form of union. Under this scheme, provisional representation in the House of Representatives was to be fixed arbitrarily for a term of years at some multiple of the representation of each Colony in the National Convention. Smuts had recommended the division of the Cape into two provinces on account of its enormous size and scattered community. This

(1) p. 274, Ibid.

(2) The respective drafts prepared by Smuts and Merriman prior to the meeting of the National Convention are not available.

(3) Walker's Lord de Villiers and His Times, p. 438

memorandum formed the basis of the draft constitution which the Transvaal delegates used with such effect in the Convention.

Rumours of the interchange of ideas between Merriman, Smuts and De Villiers were beginning to leak out, and in September Smuts found it necessary to issue a public denial of what had been going on to the effect that no draft constitution was being prepared by the Transvaal delegates and that other delegates had not been approached. Four days later, Smuts and Hull were in Bloemfontein to confer with Fischer and the ministry of the Orange River Colony ostensibly with regard to railway matters. These machinations seemed to have escaped the notice of most members of the respective Parliaments.

The six resolutions moved at the Pretoria Conference were put before the four parliaments in June, 1908. Expression was given to the view in the Cape Parliament that Merriman had approached the question "absolutely dissociated from party". In moving that the resolutions be concurred with in the Legislative Assembly, Fischer spoke in a tolerant and unbiased tone, which was calculated not to offend the English in the least particular. The absence of party feeling which characterised discussions in the Upper Chamber was also commented on. In the Transvaal, it was made clear from the outset that there was to be no party fight on the issue when Botha's motion on the six resolutions was seconded by the Leader of the Opposition. Some Progressive members did assert, however, their belief that the government of the various colonies had already got the system "cut and dried". The Natal Parliament gave voice to the undercurrent of suspicions. Though it was constantly being put before the public that there was no racial issue in South Africa any longer, this hardly seemed possible. General de la Rey was quoted as saying ... "We have lost a tremendous lot during the war, but by Closer Union we hope to regain the whole."⁽¹⁾ It was in the Transvaal Legislative Council that some indication

(1) Natal Legislative Assembly Debates, p.198.

was given of the trend events might take at the National Convention. Curtis thought the four Parliaments should attack the row of problems which remained to be solved as well as accept the principle of Union. In discussing constituencies, regardless of whether they were delimited on a voters' or population basis, the principle of equal rights laid down by Botha and Smuts would have to be adopted, if a long and bitter struggle was to be avoided. Unless one section of the population were prepared to vote down the town population by the sheer force of the country vote and found union on the dictum of a party and not on national consent, they would find that the simple and straightforward principles embodied in the Transvaal Constitution would have to be accepted. In the matter of redistribution, the Cape would have to make concessions to the Transvaal. He argued that there were those who were fond of arguing that square miles as well as people must be represented - supported by the contention that a population concentrated in towns can make its opinions heard and accepted better than a population scattered over large rural districts. He pointed out that against theoretic arguments of this kind, there was the actual experience of all South Africa that a country population is far more solid than a town population with all its varied and contending interests. In actual practice, 10,000 people in the country did exercise far more influence than 10,000 in the towns, they formed a more compact and potent political force. Only the simple principle of equality between man and man would secure the confidence of all parties. If this was once established, the burning question of redistribution would be placed beyond the arena of politics for all time. All he asked for were the principles embodied in the Transvaal Constitution and which were accepted by both parties. Botha replied that there was no question of one white race lording it over the other. "True equality in all respects should be our goal."⁽¹⁾

(1) Transvaal Legislative Council, 1908, p. 61

On 27th October, shortly before the suspension of business at 12.30 p.m., General Smuts opened the debate on the House of Assembly by moving "The House of Assembly shall be composed of members directly chosen by the voters of the Union, and the number of such members shall be as nearly as practicable three times the number of the Senators." When business resumed at 3.30 p.m., Smuts moved that "The members of the House of Assembly shall be distributed among the Provinces in proportion to the respective numbers of their registered white voters, and shall be quadriennially redistributed on the same basis. All fractional quotients shall be disregarded and shall be given to the Province with the smallest number of white voters."

The distribution of seats on a voter basis was criticised on the grounds that people would reject any proposal placing voters in one part at a disadvantage compared with voters elsewhere. The Transvaal had white manhood suffrage, whereas the Cape and Natal had fairly high qualification tests. The proportion of white population to each voter⁽¹⁾ in the four Colonies showed a more or less uniform figure for the Cape, Natal and the Orange River Colony, whereas the Transvaal figure was much lower. On the voter basis, the Cape would have been allotted 52 seats, the Transvaal 43, the Orange River Colony 15 and Natal 10, giving a total of 120. The Cape delegates stood firm against the adoption of this basis for the allocation of seats. Merriman contended that it would encourage fraud, and moved that the distribution of seats should be on a European population basis, which would have resulted in the Cape having 62 seats, the Transvaal 32, the Orange River Colony 14 and Natal 12. Malan supported Merriman by stating that the accuracy of the estimated number of European male adults was very much in doubt. He further contended that a purely mathematical basis would never satisfy the smaller Provinces. These motions were discussed until the Convention adjourned at a quarter past five o'clock p.m.

(1) Walton's Inner History of the National Convention, p. 167.
Cape - 4.4; Transvaal - 2.7; Natal - 4; Orange River
Colony - 4

Business commenced on the following day with the adjourned debate on the distribution of members. Smuts had also given notice of two additional motions on electoral areas and the election of members. (1) Merriman was against the principle contained therein of equal value attaching to the votes of town and country residents, since the former were a shifting population incapable of stability. He felt that their lack of interest in national affairs was revealed by the fact that a higher percentage of town people neglected to cast their votes at elections. Connecting this issue up with the question of the allocation of seats, Farrar argued that men on the voters' lists were residents, not floating population. Sauer suggested that the four motions moved by Smuts and the amendments thereon should be referred to a committee for consideration, and that the committee should consist of the President, the Prime Ministers of the four Colonies and two delegates nominated by each Prime Minister. Thereupon, the following delegates were nominated to the committee, namely Jameson and Sauer for the Cape, Greene and Hyslop for Natal, for the Transvaal, Farrar and Smuts, and Hertzog and Browne for the Orange River Colony. The Convention adjourned at 10.30 a.m.

On the following morning, there was no quorum present at the usual hour of meeting, as the committee appointed to consider the question of the Assembly was still engaged on its task. The President adjourned the Convention until the hour of the afternoon sitting, when he laid on the Table the Resolutions adopted by this Committee. The President read out the following four Resolutions:-

"1. The House of Assembly shall be composed of members directly chosen by the voters of the Union, and subject to the provisions hereinafter mentioned, the said members shall be 121 in number."

(1) The members of the House of Assembly in each Province shall be chosen in electoral areas to be delimited on the principle that in each area the proportion between the number of members to be chosen therein and the number of registered voters therein shall as far as practicable be identical. The members of the House of Assembly shall be elected according to the principles of proportional representation. Each electoral area shall return not less than three members.

This Resolution was agreed to.

- "2. For the period hereinafter mentioned, the members of the House of Assembly shall be allotted to the several provinces in the following proportions:-

Cape of Good Hope	...	51
Natal	...	17
The Transvaal	...	36
Orange River Colony	..	17".

There was a certain amount of discussion on this point before agreement was reached.

- "3. Until the number of members of the House of Assembly has been increased as hereinafter provided to 150 the representation of no original Province in the House of Assembly shall be less than that specified in the foregoing resolution!"

Resolution 3 was put and agreed to, but there was considerable discussion on the 4th Resolution which read:-

- "4. In 1911, and every five years thereafter, a census of the white population of the Union shall be taken for the purpose of the constitution. Immediately after the completion of such census a readjustment of members of the House of Assembly among the Provinces shall take place in the following manner:-

The total number of white male adults of the Union at the last census before such readjustment shall be divided by the number of members of the House of Assembly to give the quota. Every Province whose total number of white male adults has increased since the last census, so that, after deducting therefrom the quota multiplied by the number of members representing it in the House of Assembly, it has a surplus above the number of white male adults at the last preceding census equal to at least the quota or any multiple thereof, shall be entitled to an additional member, or additional ^{number of} members equal to such multiple in respect of any such increase. No such additional member or members shall, however, be elected before the first general election following such readjustment. As soon as the number

of members of the House of Assembly reaches the total of 150, no further increase of representation shall be given to any Province, unless Parliament otherwise provides."

Malan's amendment that white male adults on active service of the Imperial Military or Naval Forces should not be included in this calculation was agreed to by 16 votes to 14. Further discussion followed. The Cape felt considerable anxiety on this point, and Merriman moved that the debate be adjourned until the next meeting of the Convention.

The adjourned debate on Resolution 4 was resumed on Friday, 30th October. Smuts moved a further amendment concerning the wording of the mathematical calculation involved. An amendment moved by Jagger was not carried, and amendments moved by both Smartt and Smuts were later withdrawn. Resolution No. 4 as amended was put and agreed to. The discussion on the House of Assembly was continued, and Smuts moved a motion for quinquennial parliaments, which was carried.

Other business absorbed the attention of the delegates until the resumption of business at 3.45 p.m. on the 2nd November, when Sir Percy Fitzpatrick moved as an unopposed motion certain verbal amendments to Resolution 4, in connection with the calculation of additional membership. On 3rd November, the President brought up the Report of the Committee appointed on 28th October, which recommended the following further resolutions, namely:-

1. Immediately on the passing of the Constitution Act a Commission shall be appointed by the Government of each Colony, consisting of a Judge of the Supreme Court of such Colony and two other members. Such Commission shall thereupon proceed to divide the respective Colonies into electoral areas for the first elections to be held under the said Act.
2. The whole number of voters in each Province, as nearly as can be ascertained, shall be divided by the number of Members of the House of Assembly to be elected therein for the purpose of ascertaining the Provincial quota.

In making any distribution of Provinces into electoral divisions, the Commissioners shall give due consideration to:

- (a) community or diversity of interest,
- (b) means of communication,
- (c) physical features,
- (d) existing electoral boundaries,
- (e) sparsity and density of population,

and subject thereto the quota of voters shall be the basis for the distribution, and the Commissioners may adopt a margin of allowance - to be used whenever necessary - but in no case shall such quota be departed from to a greater extent than 15 per cent. more or 15 per cent. less.

3. The number of members to be elected in each electoral division shall be three or more, unless the Commissioners decide in favour of a smaller number in special cases of sparsely populated areas.
4. In every fourth year after the establishment of the Union the Gov. G. in C shall appoint one or more Commissions, each of which to be presided over by a Judge of the Supreme^{or High} Court of a Province, to carry out any redistribution which may have become necessary as between the different electoral divisions in each Province, and to provide for re-adjustment of any additional members to which such Province may have become entitled under the provisions of the Constitution. In carrying out such redistribution and re-adjustment the Commissioners shall proceed upon the same principles as in the original distribution and re-adjustment.
5. The members of the House of Assembly shall be elected according to the principles of proportional representation, with the single transferable vote...."

These resolutions covered the important issue of the first delimitation of constituencies and the redistribution of seats, upon which the different delegates held such diverging views. On 4th November, the Convention proceeded to consider each resolution

in turn. The form under which Resolution 1 was agreed upon was as amended by Farrar and Fitzpatrick of the Transvaal. The Commission was to consist of four judges of the Supreme or High Courts of the constituent Colonies, appointed for the first delimitation by the Governor in Council of each Colony. The Commission were given authority to appoint other officers to assist them, but all delimitations were to be made and signed by the Commission. The original resolution and the amendments proposed by Jagger and Malan were accordingly dropped. The manner in which the Transvaal and Cape Progressives led the debate on this point indicated their very definite ideas on this matter.

Resolution 2 called forth no discussion and was carried forthwith. There was no indication at this stage of the debates that the third Resolution was to cause such a deadlock later. Jagger gave some indication of the difficulties of the Cape owing to the extensiveness of her territory, in his attempted amendment to limit the members per constituency to three. Browne's amendment, which was also negatived, aimed at increasing the discretionary power of the Commission by adding the phrase "or for exceptional circumstances". Resolution No. 5 was agreed to without amendment, which is of interest in view of later events. When Resolution 4 was put, Farrar again opened the debate by moving that the Commission should consist of three Judges of any of the Superior Courts of the Union. Malan moved that the Commissions should be appointed five-yearly. Both amendments were agreed to, and the Convention then adjourned. These issues were not raised again on the 5th November, when the Convention adjourned until Monday, 23rd November, at 10.0 a.m.

The National Convention reassembled at Cape Town for its second session. The clauses of the Act dealing with the delimitation of constituencies had been given workmanlike form by this time and were set aside while other matters were brought up for discussion. Up to this date, the procedure followed by the National Convention had been to adopt a series of resolutions on subjects to be incorporated in the Draft Act. On 18th

December, Smuts moved that a Committee be appointed for the purpose of preparing a Draft Bill embodying the Resolutions already passed by the Convention. Here again, Smuts is seen indicating the course of events. Smuts suggested the Committee should be granted certain powers to enable them to frame amendments in the wording of the resolutions and, where necessary, in particular cases, to suggest amendments of the substance of resolutions for the consideration of the Convention. All new matter and alterations of resolutions was, for the sake of clarity, to be indicated in red ink. His suggestion for the composition of the Committee was the President, one member from each delegation nominated by the respective Prime Ministers and one representative from Rhodesia. Assistance could be obtained by the Committee from non-Committee members. These suggestions met with the approval of the delegates, and those appointed to the Committee were Merriman, Greene, Smuts, Hertzog and Mitchell.

The composition of this Drafting Committee was such as to give considerable satisfaction to the Dutch element in the four colonies. Smuts had by this time made his superior intellectual powers felt in debate even if Botha was acknowledged as the dominant personality. He was responsible for a high percentage of the motions on which the resolutions were based, and backed by his advisers, was in an unrivalled position to offer invaluable leadership in the actual business of drafting. His prior consultations with Merriman and De Villiers, and no doubt with Hertzog, gave him a tremendous moral advantage in the event of any difference arising or any opposition being forthcoming, since he already knew how far he could take Merriman and De Villiers along with him. Though in essential the task of the Committee was the formal drafting of resolutions already agreed to by the Convention, Smuts had made provision for certain discretionary powers to fall to the Committee. The Convention then adjourned until 11th January. Members were allowed to move the resolutions agreed to, but only the Drafting Committee were to be allowed to remove the Minutes of the Proceedings.

The delegates reassembled on 11th January, and on the following day the President, as Chairman of the Committee, submitted the Draft Act.⁽¹⁾ On 14th January, the delegates proceeded to discuss it clause by clause. Clause 37 introduced the section dealing with the constitution of the House of Assembly. Smuts moved that clauses 37 and 38, embodying the principle of proportional representation, should stand over and this was agreed to. Where it was known that clauses involved principles upon which no seeming agreement could be reached, the policy followed was to defer a discussion of the same, in the hope that when all other issues had been satisfactorily resolved, no delegate would wish to see Union lost on one or two isolated points. Clause 39⁽²⁾ came up for discussion and Malan moved an amendment along the same lines as his previous rejected amendments of this clause. Discussion followed. It was not until 18th January that Clause 39 again came before the Convention when discussion on the Draft Act was resumed. When no agreement was forthcoming, the clause was referred back to the Drafting Committee. When clause 42⁽³⁾ was brought up for consideration, the President moved a minor amendment which was approved. Further amendments were moved by Fischer and Hyslop, and as general agreement seemed a long way off, on Smuts' motion, this clause also was referred back to the Drafting Committee.

Clause 43⁽⁴⁾ was then put to the Convention, and certain verbal amendments were made to the clause before it was agreed to. The clause concerned the nature of the information which the Commissions were to submit to the Governor in Council. They were required to submit a list of electoral divisions, with the names given to them, a description of the boundaries of every such division, and the number of members to which each division was entitled. In addition, maps had to be provided showing the electoral divisions

(1) It was incomplete, as no resolutions dealing with finance and railways had been adopted by the Convention.

(2) Resolution 1 of the Committee appointed on 28th October

(3) Resolution 4 of the above Committee

(4) Not found in the Resolutions of 28th October Committee

into which each Province had been divided and any further particulars thought necessary. The Governor-General in Council was to proclaim the names and boundaries of the electoral divisions as finally settled. If any discrepancy arose between the descriptions and the maps, the description was to prevail. This clause followed very largely the similar provisions in the Transvaal and Orange River Colony Constitutions. There was no discussion on Clause 44, and all discussions on the Draft Act were terminated on 21st January.

On the following day, it was resolved that the Prime Ministers should have the Draft Act revised by their respective draughtsmen, jointly. On 23rd January, the Drafting Committee's proposed amendments to Clauses 39 and 42 were referred back to the Convention. Clauses 38, 39 and 42 as amended by the Drafting Committee were agreed to. On 26th January, the whole of the Draft Act was referred back to the Drafting Committee so that alterations in phraseology, necessary for purposes of clarification, could be made. On 28th January, the President intimated that the Committee had now completed its labours. It had agreed to a number of the suggestions made by the Prime Ministers on the report of their respective draughtsmen and had also made other amendments. The amendments made to clauses 39, 43 and 44 were agreed to.

On the 28th January, 1909, the Draft Act was finished. It contained departures from, and additions to, the resolutions. No record was kept of the Drafting Committee's proceedings - nor of any of the other committees - and it is therefore impossible to establish in what manner the various alterations and additions were made or by whom they were proposed.

When the Convention met on 29th January, the President laid on the Table proofs of the Draft South Africa Act. From this date, the original Draft Act was discarded and printed proofs were before the Convention when making amendments. The amendments embodied in the Second Report of the Drafting Committee had been agreed to in anticipation by the Convention on 28th January. The Convention then applied itself to the task of determining the manner in which

the results of their deliberations should be brought before the public. It was determined that the Draft Act should be published simultaneously in the five capitals on a date to be fixed later. At the instigation of Smuts, a Committee⁽¹⁾ was appointed consisting of one delegate appointed by each Prime Minister and one to represent Rhodesia, for the purpose of preparing a précis of the conclusions embodied in the Draft Act. A Committee consisting of the four Prime Ministers settled the question of the procedure to be adopted after the publication of the Draft Constitution. Merriman moved that the President also should be a member of the Committee and this was agreed to. Revised proofs of the Draft Act were tabled on 30th January and the report of the Prime Ministers' Committee submitted. It had been determined that extraordinary sessions of Parliament were to be held in the four Colonies on 30th March, 1909, to discuss the Act. If necessary, the Convention was to reassemble in Bloemfontein in the following May to prepare a final Draft for submission to the respective Parliaments in June. The four Parliaments would then appoint a Commission to take the Draft Act to London. On 1st February, the Chairman brought up the report of the Committee appointed to make a précis of the Constitution. On the following day, a minor amendment to clause 39⁽²⁾ was made.

It was agreed that the Draft Act⁽³⁾ should not be published before eight o'clock on Tuesday evening, the 9th instant, and the minutes of the proceedings were to be treated as private and confidential. The Convention met at 10.30 a.m. on 3rd February, for the last day of the second session. It was resolved to confine the information given to the Press to the arrangement in regard to the publication of the Draft Act on the 9th instant and the meeting of the several Parliaments to discuss it on 30th March. The Convention adjourned at 11.45 a.m. to meet next at Bloemfontein on 3rd May, 1909.

(1) Walton, Watt, Smuts, Hertzog, Coghlan

(2) Clause 42 of the original Draft Act.

It should be remembered that the numbers of the clauses necessarily changed with the different Draft Acts which were brought up.

(3) See Appendix 2

CHAPTER TWO

THE CRISIS IS SUCCESSFULLY OVERCOME

The Draft Act was accordingly published on 9th February, and there was an end to all the speculation and rumours. At Merriman's suggestion, the Convention had met in camera. Nor were any records kept of the speeches, but from 9th February to the opening of the Parliaments on 30th March, members explained the Act to their constituents and aired their own views. Of the four Colonies, the Transvaal was best pleased with the Act and for good reason. Praise and criticism equally issued from Natal. The Cape and the Orange River Colony voiced the complaint that too much power had been given to the towns as against the country and this cry was taken up in the Cape by Hofmeyr who strongly opposed the Bill, and was in fact the chief amender.

During the debates in the June sessions of 1908, the impression had been conveyed that an altruistic and patriotic approach was about to be made to the problem of Union. In support of this, delegates were appointed from both parties in the four Colonies. Behind-the-scenes manoeuvres had belied this to some extent, and the criticisms of the Draft Act provided further material to cast doubt on those June orations. If it is considered that but a few years had elapsed since the war between the two racial groups, suspicion grows apace. In actual fact it would appear that there was constantly in mind the racial effect which a particular method of dealing with a problem might produce, and it was from this point of view that Hofmeyr and the Bond viewed the provisions of the Draft Act.

Hofmeyr put forward his views through the channel of the Cape Town branch of the Bond, and on 14th March, the Bond Congress at Dordrecht adopted eleven resolutions expressing general agreement with the Cape Town branch. On 17th February, the latter

had passed a number of resolutions urging that the proviso in clause 39 should be made general and obligatory to the thinly populated areas and warning against the introduction of proportional representation without any experience thereof. Hofmeyr felt that the Draft Act was calculated to put the farming population at a serious disadvantage, and he objected to the under-representation of the Cape. It was mainly through his influence that the system of three-member constituencies was deleted, for an organised attack was made by the Bond on these points.

The Bond Congress left the Bondsmen who were members of the House of Assembly free to vote in Parliament as they wished as they did not want Union wrecked on any of their resolutions. The amendments proposed by the Cape Parliament did, however, follow closely the recommendations which Hofmeyr had made, and the indignation of the Transvaal was aroused because of this.

Because of the backing from the Bond, the Cape Parliament adopted a firm tone with regard to the amendments she proposed. The under-representation of the Colony was a bitter blow and made the Cape attack on unpopular features of the Act more vehement. The proposals for delimitation were thought to be vague and too much was left to the Commissioners' discretion. The Cape still clung to the idea that delimitation was the business of the Legislature. The terms used in the Draft did not give a sufficiently clear indication of the duty of the Delimitation Commission in seeing that certain electoral units had proper representation. It was argued that proportional representation could not be applied to the huge country areas, and farmers on both sides were afraid of increasing the cost of elections and difficulties of canvassing. Jameson favoured the acceptance of a principle rather than the "rule of thumb" method, but he considered it was carrying the principle to an idiotic point to attach equal value to town and country votes. Three-member constituencies would be so vast that only cars could cover them and there ought to be no divisions of that size where there were

no railways, bridges or newspapers.⁽¹⁾ Malan thought that party considerations had crept into clauses 39 and 40, which made it necessary that they should be re-written so that the Convention could make its meaning perfectly clear.

The Cape Colony amendments involved the practical abandonment of proportional representation and the re-opening of the whole question of "equal rights". It was generally accepted that proportional representation was fair and got at the will of the people as represented by the various sections. But the majority in the Cape did not hold this of value. Merriman referred to these two principles as "ridiculous, democratic ideas". "South Africa was not a democracy, and they could never make it one."⁽²⁾ The debates in the Lower House on clauses 39 and 40 extended over five days, at the end of which Molteno moved an amendment to clause 39 which was adopted without a division. The amendment stated that the delimitation of divisions in which less than three members were to be returned was to be obligatory in all sparsely populated areas, and the term "sparsely populated" was to be clearly defined.⁽³⁾ The second amendment was to clause 40. It aimed at the 15 per cent. allowance either way being graduated down in intermediate cases between densely and sparsely populated areas and a clear expression being given to when departure from quota was to be made. The Cape wished the Commissioners to be left with as little discretion as possible to prevent gerrymandering. Those members who supported the principles involved in the two clauses could not believe that the amendments merely aimed at elucidation, while there was talk of eliminating a bad and pernicious principle. The division on the vote on the second amendment was largely on party lines, Merriman, Malan, Sauer, Beck and Maasdorp voting with the Ayes, Jameson, Smartt, Walton and Jagger with the Noes. Though their reluctance was obvious, the delegates from the government side

(1) Cape House of Assembly Debates, p. 63.

(2) Ibid, p. 115.

(3) See Appendix 3

found themselves obliged to follow the rank and file of their party and vote for the fundamental alterations in the documents they had just signed. They had been given a lead in this by the Orange River Colony, for a few days previously, amendments which were practically identical in form and substance had been adopted there.

Three factors, however, tended to make the Orange River Colony less critical of the Draft Act. The allotment of 17 members in the House of Assembly exceeded the number to which population figures warranted her. Secondly, under the Union Constitution, it was estimated⁽¹⁾ that the number of urban representatives would be reduced from eleven to two. Furthermore, there was in the colony no force comparable with the Bond to unite the forces of opposition to the principle of equal rights.⁽²⁾ Despite these factors, concern was expressed as to whether these provisions of the Act wherein discretion was given to the Commissioners would be interpreted so as to mitigate the difficulties of the rural districts. Though the delegates realised the danger of re-opening issues upon which compromises had already been reached, Fischer and Steyn voted with the Ayes on the first resolution passed and Hertzog voted with them in favour of the second resolution. The resolutions aimed at more clearly defining cases wherein discretion was to be exercised under clauses 39 and 40. The first resolution asked for a definition of the terms "sparsely populated areas" and "sparsity and density of population", occurring respectively in clauses 39 and 40 of the Draft Act. Some thought it illogical to restrict the judges to a 15 per cent. allowance and leave these terms undefined. The Legislative Council was not in agreement with this resolution, but did concur in the second amendment, calling for a clearer expression of when the quota could be departed from.

The Orange River Colony and the Cape were on the point of contemplating rejection of the Act of Union if the amendments

(1) Cape House of Assembly Debates, p. 113.

(2) The Orange River Colony experience of the application of this principle had not been such as to secure her adherence thereto, for the urban areas had been grossly over-represented.

suggested by them were not passed. As against this anxiety, there was a general atmosphere of satisfaction in Natal and the Transvaal, which produced the desire to maintain the Act in its draft form.

Considerably little interest was evinced in the Natal Parliament over the delimitation of constituencies. Their main preoccupation was to ensure that the allocation of members should not be altered at the Bloemfontein session, and to attempt to provide against any decrease therein after a lapse of ten years. When Chapter IV came up for discussion, clauses 38 to 50 were taken as read as "they are all formal clauses".⁽¹⁾ Clause 40 was, however, reverted to, primarily because of the knowledge that this clause had been the subject of considerable discussion in the Cape Parliament. Some explanation of sub-section 3, clauses (a) to (e) was sought. The reasons for including this sub-section and its likely effect on the positions of the electoral districts were queried. Hyslop, who had represented Natal on the Committee appointed on the Constitution of the House of Assembly, gave a somewhat hazy explanation, as he understood the position. He felt that the Commissioners might give a place like Zululand 15 per cent. more power than it was entitled to, "but how it will work out in practice, seeing the Commissioners have to take into consideration other things than the density of population, means of communication, physical features, present electoral divisions and so on, I do not know, but it would probably be in only a few cases they would make these allowances. It is difficult to say what view the Commissioners will take."⁽²⁾ When Evans, who had always fought for equal rights, declared that he thought the 15 per cent. was fair and just, clause 40 was re-passed. Moor indicated as an outstanding feature of the Draft Act that equal rights for the two white races had been secured.

(1) Natal Legislative Assembly Debates, p. 162.

(2) Ibid, p. 163.

In the past, townsmen had not had equal rights in Natal, but to have maintained the rural bias after Union would have prevented the two races from being set on a footing of absolute equality with regard to civil rights. Some small concern was felt by certain members over the interpretation given to particular clauses by delegates in the other colonies, but Watt attached no importance to the interpretation put forward by individual delegates.

No comparisons were made between the past "lack of system" and the more democratic principles of the Draft Act, nor was there any reference to proportional representation. The Transvaal had imagined that any opposition from Natal would derive from her unfamiliarity with the principles and machinery introduced. This did not prove to be the case. While extravagant adjectives of praise were used to describe the principles underlying the Act,⁽¹⁾ the consensus of opinion was that until the anomalies were removed from the Transvaal-Mozambique Treaty, it would be impossible for Natal to enter a Union, which she had been led to contemplate largely on economic grounds. The absence of any real racial problem in Natal probably accounted for the lack of interest in the delimitation provisions, and Natal lived up to her old reputation of preoccupation with money matters. This does not mean that Natal had no recommendations to make. Sundry trifling amendments were adopted, but no principle was involved. The Transvaal Parliament, on the other hand, passed no amendments at all.

Botha felt that Transvaal interests had been well protected in the Draft Act, and therefore considered it would be better to make suggestions to the Convention rather than frame amendments. The Progressive Party, too, were able to feel that the bargain they had struck with Het Volk had paid good dividends and they were anxious to maintain the status quo. Farrar quoted from American history, "If the Constitution is our choice, a constitu-

(1) The British South Africa Act prepared by Natal Colony is not available; it was derided by members during the debate on the Draft Act.

tional door is open for amendment."⁽¹⁾ Farrar added that there were certain principles in the Constitution dealing with the allocation of seats, the voters' basis, the basis of representation and proportional representation for which his party had fought for years and upon which they could accept no amendment whatsoever, though he was aware that the Cape was determined to move amendments in this connection. It was hoped that the provisions regarding equal rights would be a sine qua non as far as the Transvaal were concerned. The English-speaking population wanted equal political rights and they in turn wanted the Dutch to have complete equality regarding language. During the drafting of the Transvaal Constitution, the idea of automatic redistribution and equal constituencies had brought forth heated arguments, but when Het Volk won the General Election in March, 1907 under this system, they were satisfied with the principles.

The clauses on delimitation in the Draft Act followed closely the wording of the Transvaal Constitution. The one important departure therefrom was the provision for proportional representation as against the existing system of single-member constituencies. Smuts had been largely responsible for the introduction of this principle, having carefully gone into the figures beforehand to estimate the probable effect on party results of such a principle. The advocates of proportional representation in England had won over adherents in South Africa, and literature on the subject had been circulated among the delegates to the Convention. The members of Parliament felt on familiar ground when discussing the provisions of the Draft Act, and Fitzpatrick contended that if the Colony had managed to get many of its suggestions accepted, that was because the Transvaal had had the patriotism to consider others' rights beforehand. The suggestion has been put forward, however, that no amendments were made because the political education of the Colony was not so advanced as that of the Cape.⁽²⁾

(1) TRANSVAAL Legislative Assembly Debates, Column 125.

(2) L. of M., p. 299

As it was, the clauses on delimitation were barely mentioned, Chapter IV being agreed to as a whole. On two points, uneasiness was felt.

Some concern was expressed as to how many young men would qualify to vote in 1911. Smuts remarked "The whole race of young men in South Africa have migrated to the Transvaal."⁽¹⁾ Another speaker felt that clauses 39 and 40 had qualified the principles of "equal rights" and proportional representation, and hoped no further departure would be considered for one moment within the range of practical politics.

In all, it can be said that in no Colony was there any comprehensive critical appreciation of the whole framework regarding delimitation. The delegates felt the ground had been covered so often before Parliament met, that there was frequently reluctance to make another start on an explanation of the Draft. One notable feature was the absence of any comment on the plan for redelimitations, though the idea involved was completely revolutionary to both the Cape and Natal. There seemed little appreciation in the Cape and the Orange River Colony of the fact that equal political rights and automatic redistribution went hand in hand. Both colonies sought to remove the one, while retaining the other. In the Cape's suspicion of the body who were to effect the redelimitations, there is evidence of outlook being conditioned by past experience, for in both Natal and the Cape, past redistributions had been a party issue. The Cape and Natal had no alternative scheme to propose as against that adopted in the Act of five-yearly re-delimitations, the Cape delegates being in the main preoccupied with maintaining the rural bias in the system of representation. Each Colony concerned itself with those clauses of the Draft Act the application of which might diminish its political power.

(1) Transvaal Hansard, 1909, Col. 321. (Legislative Assembly Debates)

Sundry amendments and resolutions passed by the respective Parliaments faced the Convention when it reassembled at Bloemfontein on 3rd May, 1909. Though small in number, the amendments touched vital issues and heated debates took place. The session only lasted nine days, but there were throughout signs of weakening in "the Convention spirit" and the Convention came nearest to breaking over the issues raised.⁽¹⁾ Tension was high because it was the final form of the Constitution that was at stake, and the delegates would have to face their respective Parliaments and justify their decisions with regard to the final draft. There was also the time element involved. When the Convention met, the President read a letter from the High Commissioner expressing the hope that the deputation would be in London to get the Act adopted not later than 17th July.

For political reasons also, an early decision was sought. The Afrikaner parties were determined to do two things in particular, eliminate proportional representation and strengthen the clause regarding the 15 per cent. allowance, so as to secure for themselves an immediate political advantage. The main drive came from the Cape. The Draft Act represented a slight concession by the Afrikaners in that the 15 per cent. variation was in no way so great as had previously existed in the Cape and Natal. In this respect, the Progressives thought the Act was an advance, and they went to the Bloemfontein session equally determined to maintain the clauses as they stood.

A printed paper containing the resolutions adopted and the amendments suggested by the various Parliaments⁽²⁾ was laid upon the Table and circulated among the members. Though no amendments had been put forward by the Transvaal Parliament, Smuts gave notice of some on behalf of the Transvaal delegates. They numbered twenty, and were mostly concerned with terminology. Clauses 38 to 43, dealing with the electoral districts,

(1) As revealed by Merriman's private correspondence

(2) See Appendix 3

were not included therein. The President read a letter dated 3rd May, 1909, from the Prime Minister of the Orange River Colony, transmitting the resolution⁽¹⁾ adopted by the Legislative Assembly of his Colony, but not concurred in by the Legislative Council, regarding a definition of the terms "sparsely populated areas" and "sparsity and density of population". The real business then began.

Natal had shown considerable concern over the wording of clause 32⁽²⁾ of the Draft Act, and Hyslop moved to omit all words after "diminished", and the motion was carried. Natal hoped by this amendment to ensure that the original Colonies would never have fewer members than provided for the first division. Farrar objected, and asked for a reconsideration of the clause because this represented a departure from the principle of equality under Union, an exception to which they had agreed for a period of ten years.⁽³⁾ Bearing in mind the pledge made by Het Volk to the Transvaal Progressives, Botha indicated it was doubtful whether he and his co-delegates could sign the Constitution if the amendment was not negatived. Merriman then moved that the amendments proposed by the Cape to clauses 39 and 40 stand over. Fitzpatrick objected because his party were not prepared to go further until some definite arrangement was reached on this clause. The debates revealed that there were three extremists against the rural population, namely Farrar, Fitzpatrick and Jagger. Jameson was neutral. Having stirred up this hornets' nest, the delegates moved the adjournment of the Convention until the following day.

On the following day, Smuts sought to ease the minds of the Transvaal Progressives at the outset by making a vain attempt to get Hyslop's amendment to clause 32 negatived. Again on Merri-

(1) See p. 45 above

(2) "32. The number of members to be elected in the original Provinces at the first election and until the number is altered in accordance with the provisions of this Act shall be as follows:-

Cape of Good Hope	- fifty-one	Natal	- seventeen
Transvaal	- thirty-six	O.R.C.	seventeen

These members may be increased as provided in the next succeeding section but shall not in the case of any original Province be diminished until the total number of members of the House of Assembly in respect of the Provinces herein provided for reaches one hundred and fifty or until a period

(cont. on p. 52)

man's motion, further consideration of the clause was to stand over. To complete the dilemma of the delegates, shortly after 11.15 a.m., Fischer moved the addition of a new sub-section (iv) to clause 40, covering his Colony's proposed amendment. It read:-

"(iv). In carrying out the provisions of section thirty-nine, and of this section the Commission shall regard areas containing one registered voter or less to the square mile as extremely sparsely populated; and areas containing ten registered voters or over to the square mile as extremely densely populated. In extremely sparsely populated areas the full fifteen per cent. shall be deducted from the quota, and the multiple of it and the quota referred to in sub-section (ii) of this section shall be 1. In extremely densely populated areas the full fifteen per cent. shall be added to the quota. The Commission shall in regard to areas not being either extremely densely or extremely sparsely populated deal with the same as far as practicable on a sliding scale of departure from the quota within the limit of percentage as above fixed."

Botha agreed that further clarification of this clause was necessary to remove the suspicion that had been aroused as a result of the amendments and resolutions of the respective Parliaments, but some of the delegates still wished the interpretation of the terms to be left to the Judicial Commission. Discussion on this motion occupied the delegates until the meeting was adjourned at 5 p.m.

Merriman later wrote of the scene on 5th May. Both sides put up a tremendous fight over Fisher's motion, which was practically the same as the amendment proposed by the Cape. Fis-

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- (2) cont. from p. 51: ...of ten years has elapsed after the establishment of the Union, whichever is the longer period.
- (3) from p. 51: Walton's Inner History of the National Convention, p. 179/180.

cher's definition of the terms involved, and the proposal of a sliding scale, were thought to emanate from the Cape Town Branch of the Bond. Some Progressive delegates accidentally came across certain calculations on the effect of this interpretation in the Cape Colony which revealed that out of 46 constituencies, 27 had less than one registered voter per square mile.⁽¹⁾ Jagger quoted these effects at the Convention to the annoyance of Merriman, who had intended their circulation to be strictly limited to members of his own party. In support of Fischer's amendment, Merriman insisted that the interpretation which some delegates had put on clause 40 would have the virtual effect in the Cape of a political revolution, and before he could sanction the same, he would have to hold a referendum on the issue. He privately expressed the view that Selborne was behind all the trouble over "equal rights", and he regarded it as a case of South Africa against the Rand. When no conclusion was forthcoming, De Villiers put forward his suggestion, which entailed the substitution of a new sub-section (ii) in section 40, to read:-

"(ii). Each Province shall be divided into electoral divisions in such a manner that each such division shall, subject to the provisions of sub-section (iii) of this section, contain a number of voters as nearly as may be equal to the quota of the Province."

De Villiers wanted equal treatment for town and country within the Provincial boundaries. The consensus of opinion was that all delegates would be likely to concur except Fitzpatrick and Farrar. The ensuing discussion took on a somewhat disturbing note, and Botha moved the adjournment of the Convention at 11.45 a.m.

Consideration of the amendments proposed by Fischer and De Villiers was resumed on 6th May. Fischer had amended his new sub-section (iv) to read that the Commissioners were to make the full 15 per cent. allowances therein referred to "as far as cir-

(1) Walton, p. 189.

cumstances permit". Despite this small concession, deadlock again resulted, and further consideration of the amendments was adjourned until the afternoon sitting, when they were before the Convention again. No progress was made to the time of the adjournment at 4.50 p.m. Still the same issues faced the delegates on 7th May. On the one hand, there was Fischer's motion, which had first been moved on the 4th and amended on the 6th, while the President's motion stood over from the 5th May. The Convention was beginning to split up into party factions, so Botha reverted to the practice previously adopted of referring contentious points back to a Committee. He moved that sections 39 and 40 and all other provisions connected therewith be referred to a committee consisting of two delegates appointed by the Prime Ministers of each Colony and one from Rhodesia, the President to be Chairman. A few hours later, the Chairman of this Committee⁽¹⁾ brought up its report which recommended the adoption of the President's amendment with the further proviso that the sixty-fourth section should be amended by providing that all bills repealing or amending any provisions of Chapter IV under the heading "House of Assembly" should be reserved for royal pleasure. This compromise was adopted unanimously by the Convention and the amendment proposed by Fischer to clause 40 was withdrawn. Relief and pleasure were general at this progress having been made.

Trouble was soon stirred up again, however, when on Sauer's motion, the Convention reverted to clause 39. Sauer was associated with the Bond Party and had been charged with getting the Cape amendments passed, the most important factor being the abolition of proportional representation. Jagger strongly opposed the idea of single-member constituencies, particularly as, in the Cape, on the basis suggested, there would be 23 such divisions. The Orange River Colony attached such importance

(1) The Committee was made up as follows:- Sauer and Jameson (Cape), Moor and Greene (Natal), Smuts and Farrar (Transvaal), Steyn and Fischer (Orange River Colony) and Coghlan (Rhodesia).

to the abolition of the principle of proportional representation, that Hertzog asserted that he would not feel justified in recommending his Parliament to ratify the Constitution if the amendment was not carried. Merriman became impatient with these expressions of party politics. The tone throughout the Convention had been a high one and a spirit of patriotism had permeated the proceedings. This spirit was beginning to flag and motives and ambitions, individual and racial, were revealed. It was unfortunate that the question of the delimitation of constituencies had brought out the politician in every delegate. The Progressives took their stand on the point that the Convention could not rightly go back on the resolutions adopted in Durban. The Natal delegates quite believed that proportional representation would inconvenience the northern parts of Natal, but believed the advantages in introducing the new system merited the trouble which would have to be expended. Any interpretations of the Draft Act which were unfavourable to the Afrikaner parties were said to differ from the interpretations given at the previous sessions, and Sauer seconded the previous remarks of Merriman that a referendum would have to be held in the Cape if these interpretations were persisted in.

Fitzpatrick clarified the standpoint of the Transvaal Progressives still further by explaining that the two clauses under dispute were an essential/^apart of the agreement to the English section as the language question to the Dutch. When the principles of proportional representation and "equal rights" had been accepted at Durban, they had been prepared to build further. The Transvaal, as well as the Cape, would have difficulties under the Act, but he thought the solution lay in leaving the matter to impartial judges. The difficulties at the Bloemfontein session arose from the delegates trying to impose the wishes of their respective Parliaments, who would not appreciate that Union would have to be a compromise if it was to satisfy all parties concerned. When controversial issues were re-opened at Bloemfontein, all who had not been completely satisfied with the Durban arrangement took the opportunity to show their dissent.

As had happened on previous occasions, De Villiers intervened to put an end to the deadlock. He raised three points. The Cape had only been given 51 members, which was unfair numerically, whether worked out on a population or European male adult basis.⁽¹⁾ The arguments of the Cape delegates were largely based on the difficulties of that Colony due to its excessive size, this difficulty being aggravated by the concession the Cape had made in regard to its number of representatives. The whole argument on the controversial clauses turned on the acceptance or otherwise of proportional representation. He himself favoured the principle thereof, but admitted that the system was unknown in South Africa and was perhaps unsuitable for a country of such size, and a serious practical objection to its adoption would be to get competent returning officers. De Villiers sympathised with the attitude taken up by the Cape delegates and thought concession was warranted in view of the generosity shown by that Colony. On these grounds, he put forward an alternative scheme, which he and Merriman had worked out together, for the adoption of single-member constituencies for the whole Union. The Cape amendment therefore fell away. By this means, clause 40 could be left unchanged.

Farrar regretted any departure from the Durban compromises, but intimated that he would accept De Villiers' motion provided amendment of clause 40 was subject to a two-thirds majority of Parliament for ten years or until Parliament numbered 150 members. Fitzpatrick stated he was prepared to meet those holding opinions opposing his own, if the principle of "equal rights" was entrenched along with the language clause and Native franchise in the Cape Colony. Malan was prepared to accept the President's amendment if the Transvaal did so, but he desired to see the provision on the departure from quota because of sparseness of population added to sub-section (i) of clause 40 and not (iii). This suggestion

(1) Which would have given 62 and 55 members respectively.

went unsupported. The amendment originally proposed by the President to sub-section (ii) on 5th May was put and carried. Agreement was therefore finally reached on clauses 39 and 40 on 7th May.

Malan then made the suggestion that ten-yearly delimitations would prove adequate. Farrar was alarmed that his party might be called upon to make further concessions, and indicated that up to that time, there had been no talk of other than five-yearly delimitations. Malan did not move an amendment on the point.

On 8th May, Smuts moved an amendment to clause 42, to make it conform with the amendments substituting single-member divisions for proportional representation.

Two days later, consideration of the few remaining amendments was resumed, whereupon the Convention reverted to clause 32, which was standing over. Smuts was successful on this occasion in getting his amendment thereto carried, whereby the words omitted from this clause on the 3rd instant were restored.

At the end of the Bloemfontein session, the Draft Act,⁽¹⁾ further amended, was printed with a second and final report. On 11th May, the Convention proceeded to the signing of the Draft. Ten copies were signed, one in Dutch and one in English for each of the four colonies and for the archives. Merriman moved a vote of thanks to the President, whereupon the Convention came to an end.

The final form of the Draft Act differed from the Draft published with the First Report mainly with regard to clauses 39 and 40. The most significant change herein was the rejection of the principle of proportional representation. The Transvaal delegates informed their Parliament that they had only acquiesced in this when the question of Union was endangered. In view of all the publicity given to the idea of "equal rights", all clauses contained in Chapter IV could only be altered by a two-thirds majority of a joint sitting and the amending Bill was to be re-

(1) See Appendix 4 for the final form of the South Africa Act

served for royal pleasure. Some considered that "equal rights" had not been provided for on the grounds that the Constitution did not secure the rights of minorities and the amendment to clause 40 favoured the rural as against the town population. It was felt that proportional representation was the logical development of the principle of "equal rights". The rejection of proportional representation would mean that as before, particularly in the Transvaal and the Orange River Colony, the rural areas would return mainly Dutch members and the towns mainly British, and the sharp lines between town and country would be intensified by race prejudice. Within the provincial boundaries, the electoral divisions were to contain an almost equal number of electors but, as with the Transvaal Constitution, no complete country-wide equalisation of electoral areas had ever been contemplated during the framing of the Act. The opinion of the majority was that, in a vast country, it was desirable that discretion should be afforded to the Delimitation Commission to make the country constituencies smaller than the number of voters therein warranted. After the Bloemfontein session, it was clear that the sparsely populated divisions would expect the benefit of the full 30 per cent. allowance.

The Parliaments of the Cape, the Transvaal and the Orange River Colony met on 1st June, 1909 and adopted resolutions and addresses respectively approving of the Draft Act and requesting the King to cause the necessary steps to be taken for the authorisation of the proposed union. Delegates were appointed by these Parliaments to proceed to London. There could be no simultaneous action in Natal owing to the fact that a referendum was taken on the issue. A Proclamation dated 14th May was issued by the Governor fixing the 10th June as the date for taking the referendum, the results of which proved to be 11,121 against 3,701, which meant a majority of 7,420 in favour. On 16th June, the Natal Parliament met and adopted resolutions similar to those of the other three Parliaments with modifications rendered necessary by the passing of the Referendum Act and the decision of the electors thereunder.

The delegates proceeded to London under the instructions that they were not to agree to any changes in the principles and provisions of the Act. In consultation with the Secretary of State for the Colonies, they agreed to a further 53 amendments, which were of a purely technical and verbal nature, prior to the Act's introduction into the United Kingdom Parliament. The Draft Act was introduced into the Lords and passed through that House and the Commons without further amendment, and received the royal assent on 20th September, 1909. The 31st May, 1910, was fixed as Union Day by a proclamation dated 2nd December, 1909.

THE IMPORTANCE OF PERSONALITIES, CONVENTIONS
AND FORMAL AMENDMENTS

The Act laid down that the Governor-in-Council of each of the four colonies should appoint a Judge of any of the Supreme or High Courts of the Colonies to form a joint commission to effect the delimitation of the electoral divisions.⁽¹⁾ This provision was one of several to be found in the Act which entailed some concession of a temporary nature to the federal principle. The framers were prepared to permit this recognition of the geographical factor in the first division, each colony being responsible in a sense for its first delimitation, but future alterations were to be effected by a commission of three Judges appointed by the Governor-General in Council after every quinquennial census.⁽²⁾ On a consideration of the personnel of the ten commissions,⁽³⁾ certain factors reveal themselves. No judge of the Appellate Division of the Supreme Court has been appointed to the commission, but the nominations have fallen upon judges of the Provincial and Local Divisions, other than Judge Presidents. Appointment to a commission involves the absence of the judges from their normal duties for a period of approximately six months so it is naturally found more expedient to continue to spread the appointments over the several Provincial and Local Divisions and at no time were two or more judges from the same division appointed at one and the same time. The Cape has been represented on every Commission, the Transvaal on eight and the Orange Free State and Natal on four Commissions. On three occasions a judge was appointed from the Griqualand West division and twice from the Eastern Division. Pressure of work on the respective Benches no doubt indicates where nominations shall be placed to a certain extent.

Whereas it is laid down in the South Africa Act that appointments are to be made by the Governor-General in Council, in practice

(1) Section 38, South Africa Act (2) Section 41, Ibid.

(3) See Appendix 6

this privilege falls within the functions of the Department of the Interior. The Head of this Department is also responsible for raising advocates to the Bench and he is in the best position to determine how the appointments can be made with the least disturbance to normal judicial functions.

It necessarily followed that the first years of Union were largely an experimental period.^{P.H.} Lawrence was elected to the Chair on the First Commission presumably on the grounds that he had been a member of a Transvaal Delimitation Commission.⁽¹⁾ It was thought advisable to preserve continuity of personnel between the First and Second Commissions, with the modification in the omission of W. H. Beaumont, who had in the first instance represented Natal, in order to conform with the numerical requirements. In this way, it was sought to give a certain stability to procedure and interpretation. There was a complete change in personnel on the Third Commission, but again two of these commissioners found their way on to the following commission appointed in 1922. Likewise with the two succeeding commissions. On the former, there was a complete change of personnel while two of its members were retained for a second Commission. Continuity of personnel was maintained as between the Seventh, Eighth and Ninth Commissions, with C. W. H. Lanedown in the Chair on the two former bodies and J. M. Murray and J. E. de Villiers serving on the latter two commissions. The Tenth Commission again represented a complete break in personnel and precedent would suggest that all or some of its members will find their way on to the next Delimitation Commission to be held. However, since statutory provision has been made for ten-yearly delimitations in the future, it may be slightly more difficult to maintain such continuity in view of retirements and elevation to a Presidency or to the Appellate Division of the Supreme Court.

Membership on the first commissions tended to fall to judges with many years of public service to their credit, but the prac-

(1) L. of M., p. 286

tice has arisen for nominations to fall on judges recently raised to the Bench. F. G. Gardiner who sat on the Third Commission had been raised to the Bench on 16th October, 1914. On the Fifth Commission were found W. Pittman and J. H. F. E. R. C. Gey van Pittius whose elevation to the Bench dated from 22nd April, 1925 and 1st January, 1926, respectively. G. J. Maritz was raised to the Bench on 1st May, 1930 and sat on the Sixth Commission in 1932. Similarly there was a lapse of approximately two years between the elevation of A. v.d. S. Centlivres and his appointment to the Seventh Commission. J. M. Murray and J. E. de Villiers, who were members of the Eighth Commission, received their judicial appointments on 15th February, 1937 and 1st March, 1939 respectively. They were assisted on the Ninth Commission in 1947 by J. C. de Wet, whose elevation to the Bench dated from 1st April, 1946. With regard to the commission held in 1952-53, all the members thereon had but recently been raised to the Bench, C. P. Brink on 1st October, 1948, J. W. van Zijl on 1st April, 1950 and D. O. K. Beyers on 1st August, 1951.

This growing preference for younger personnel may be based on the practical reason of the comparatively arduous nature of the work facing the Commissioners. As experience has suggested a certain course of procedure, the commissioners now find themselves faced with a task which occupies them continuously over a period of around eight months, during which time they are required to visit the larger towns throughout the Union and make trips by air and road to gain a first-hand knowledge of topographical and economic conditions and means of communication. Furthermore, it may be felt that the older judges can be more profitably engaged in their normal duties than taking part in an inquiry which in other countries is performed by people with no judicial training.⁽¹⁾ However, it cannot be ignored that charges of corruption may be

(1) cf. New Zealand and U.S.A.

made under this practice which a perusal of the South Africa Act does not suggest. In establishing that appointments to the Delimitation Commissions were to be made by the Governor-General in Council, it was intended that they were to be made on non-party lines, as the selection of a judicial membership would suggest, but in the same way as the Crown has lost all real power, so the functions of the Governor-General have since 1910 become even more of a formal nature and his appointing power has become vested in the Ministry in office. In practice, the Department of the Interior has the responsibility for raising advocates to the Bench and appointing three of their number to the Delimitation Commissions. Since it is desirable that the workings of the Constitution should be held in respect by the people, it is unfortunate if, by a combination of factors such as any irregularities in an elevation to the Bench, or any recent active participation in political affairs by one of the appointees, coupled with outspoken criticism of a Commission Report, the Constitution should be held in disrespect and the judiciary of the country laid open to suspicion.

A consideration of how far complete breaks in personnel followed a change of government may perhaps indicate to some extent how far the party in office tries to utilise this appointing power to its own advantage. The first break in government came in 1924 when Smuts was defeated at the General Election and the "Pact Government" of Hertzog allied with the Labour Party was returned to power. The Fifth Commission, appointed in 1927, represented a complete break in personnel,⁽¹⁾ the appointment falling on judges whose academic background was mainly South African as against men whose early legal training had been received overseas. After the fusion between Hertzog and Smuts in 1933, there was another break on the Seventh Commission, the membership of which was of a more composite nature, as was the case on the two succeeding Commissions, after the United Party successes in 1938 and 1943. There

(1) See above, p. 61.

was a change of government again in 1948 when Malan became Prime Minister and the Commission appointed by his ministry again represented a complete break in personnel and the appointment of three judges with a similar kind of background.

The interpretation to be put on the choice of Commissioners in 1927, 1932 and 1952 should be, that with the case of Hertzog in particular, the aim was not so much to "pack" the Commissions as to set the two language groups on the Bench on a footing of complete equality. At the outset, members of the judiciary with an English background had monopolised the Commissions. In addition, if it is to be established that the Commissions in question delimited in favour of the party in power, the significant factor is that the decision of a judge depends upon the nature of the premises from which he proceeds. ⁽¹⁾ It is not so much the question of the integrity of the judges that is disputed, but recognition is given to the fact that an unconscious bias will probably be discernible, since every man is to a certain extent the victim of his environment, and his decisions will be conditioned by the political creeds and standards under which he was reared. ⁽²⁾ To this extent alone can it be claimed that he was biased. This very factor, however, emphasises the importance of the nature of the membership of the Commissions. Where the differences between the two leading political parties touch fundamental issues, such a bias is likely to be the more marked. During the framing of Union, De Villiers' sense of fairness led him to support Proportional representation though he admitted a natural bias in favour of the rural population. ⁽³⁾

Under Section 38 of the South Africa Act, the Commissioners were to elect one of their number as Chairman and to appoint such other persons to afford them assistance as they might deem necessary. In terms of this provision, each commission has appointed a Secretary to assist it and the Tenth Commission saw fit to appoint an

(1) See Finer, Modern Government, p. 214
(2) See Walker's Lord de Villiers and His Times, p. 471
(3) Witness how the Seventh Commission refer back to the Fourth Commission, but in no instance to the Fifth or Sixth. ✓

Assistant-Secretary in addition thereto. G. T. Doyle, who was a member of the electoral division of the Department of the Interior, served as Secretary to the Seventh, Eighth and Ninth Commissions and was able to render valuable service to the Commissioners. The commission were empowered under the same section to regulate their own procedure. It is unlikely that the framers envisaged the different capacities in which important personages would take part in the delimitations. When the Seventh Commission were faced with the problem of eliminating one seat in the Orange Free State, Dr. Dönges of the Cape Bar put forward certain significant and well-founded arguments on behalf of the people of Hoopstad, expressing local opposition to the elimination of that constituency.⁽¹⁾ On the strength of these arguments, Hoopstad was retained. In 1947, J. W. van Zijl presented the Nationalist Party plan for the Cape Province to the Delimitation Commission.

The commissioners drew on the assistance of various persons in their official capacities. The First Commission acknowledged the assistance rendered to them by magistrates and other local officials whose intimate knowledge of local conditions was unrivalled.⁽²⁾ The Surveyors-General of the four Provinces were responsible for the preparation of maps in accordance with the provisions of the principal Act.⁽³⁾ When the Delimitation Commission has decided on its scheme for a particular province, it is handed over to the Surveyor-General, who is responsible for the description of boundaries. If he finds the boundaries impractical, he may on these grounds make suggestions for minor changes. Later commissions secured the assistance of the Director of Trigonometrical Survey in the preparation of preliminary maps.⁽⁴⁾ The Government Printer and the Director of Census were also called upon to give assistance, and under the Ninth Commission the services of the Secretary for Public Works were

(1) Seventh Del. Com. Report, para. 95
(2) First Del. Com. Report, p. 19
(3) Section 42(1)(b), South Africa Act
(4) Seventh Del. Com. Report, para. 114

utilised. Under the Electoral Laws Amendment Act of 1940,⁽¹⁾ the registration of voters was to be performed by specially trained electoral officers assigned for duties at ten different points within the Union, and the officials holding these positions were called upon to provide much of the information that the Commissioners required. As the recognised procedure in delimiting involved more travelling, reference is made in the reports to the assistance given by the General Manager and System Manager of the Railways⁽²⁾ and by the Department of Defence and the South African Air Force.⁽³⁾ The Organisers of the political parties and other party representatives afford the commissions considerable assistance in the form of suggestions.

It was set out in the South Africa Act that the First Delimitation Commission should be appointed between the date of the passing of the Act and the date fixed for the establishment of the Union.⁽⁴⁾ Accordingly, the Governor-in-Council of each of the four colonies nominated a judge from his own colony to form a joint commission and on 1st November, 1909, a meeting was convened by the High Commissioner at Bloemfontein. Union Day had been fixed for 31st May, 1910, and on 10th May the First Delimitation Commission submitted their Report to the Governor-General. Section 41 of the Act formed the statutory basis of the second Delimitation Commission, which was appointed at the end of March, 1912 and handed in its report on 19th February, 1913. This represented a space of under three years since the first report had been submitted, whereas the Act provided for five-yearly delimitations.⁽⁵⁾

As the wording of the Act was such that the Governor-General had to appoint the Commissioners as soon as possible after every quinquennial census, the appointment had of necessity to be made after the census held on 7th May, 1911. The Act had anticipated this by the provision for a census to be taken in 1911,⁽⁶⁾ and

(1) Act No. 20 of 1940

(2) Ninth Del. Com. Report, p. 48

(3) Tenth Del. Comm. Report, p. 42 (4) Section 38, South Africa Act

(5) Section 41, Ibid.

(6) Section 34, sub-section (11), South Africa Act

further statutory provision was made therefor by an early Act of the Union Parliament.⁽¹⁾ This redelimitation was not superfluous in so far as the first delimitation commission had based its decisions on the census of 1904, so in this respect it could be expected that greater changes would be found necessary than the lapse of three years would suggest.

Seven years elapsed before the third commission was appointed, owing to the misfortune of South Africa being involved in War during this experimental stage under Union. The commission held their first meeting at Pretoria on 4th August, 1919, and were continuously engaged on their duties until 30th December, 1919. The time factor would suggest a greater expectation of change when coupled with the possibility of a different interpretation being put on the Act with the change in personnel. The Fourth Commission sat from 16th December, 1922 to 2nd July, 1923 and the census figures upon which they based their calculations were those of 3rd May, 1921. It will be observed that the census was held on a date as established by statute, which meant that the delimitation which followed soon afterwards represented a lapse of between three and four years from the preceding commission.

After this date, there being no extraordinary conditions prevailing, the commissions sat at five-yearly intervals, and in each instance, with the exception of the Tenth Commission, based their calculations on the results of the quinquennial census. The Fifth Commission was engaged on its duties from 15th August, 1927 to 29th February, 1928. The Sixth Commission applied itself continuously to its task from 2nd March, 1932 to 23rd August, 1932. At intervals of five years, the Seventh and Eighth Commissions sat between the months of June and November and the Ninth Commission, though appointed in the same month, did not complete its task until the month of December. The work of the Tenth Commission extended somewhat further into the month

(1) Section 3(1) of "Census Act, 1910" (Act No. 2 of 1910)

of January.

Under the new Section 41 as substituted by the Electoral Laws Amendment Act, 1952,⁽¹⁾ delimitations were to be no longer tied to the census. The Governor-General was to appoint a commission in 1952 and thereafter at intervals of not less than five and not more than ten years. F. S. Malan had first suggested ten-yearly delimitations at the National Convention but no resolution had been moved.⁽²⁾ Provision for ten-yearly delimitations had been made in 1937⁽³⁾ at Hofmeyr's instigation when an Act was passed providing that from 1951, a census should be taken every ten years. The reasons advanced by him were that the existing practice of five-yearly delimitations was expensive,⁽⁴⁾ that three judges had to give up at least one year to the job and that too frequent changing of boundary lines caused inconvenience generally and in particular to members representing those constituencies undergoing change.⁽⁵⁾ The first argument falls away when delimitations are no longer tied to the census. The actual expense of the commission itself could not alone warrant a change from five-yearly to ten-yearly delimitations, though it could be argued that the judges' salaries for the period of the commissions should also be added to these figures, and this has been done with regard to the Tenth Commission. The salaries of the three acting judges appointed to act in the absence of the three judges on the Commission amounted to approximately £5,000, and this figure was included in the total cost of the Commission. Certain factors have changed the circumstances upon which Hofmeyr based his decisions at that time. There had been phenomenal industrial development resulting from the war years, with its consequent movement of population, the tremendous developments of the Orange

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- (1) Section 1 of "The Electoral Laws Amendment Act (Act No. 55 of 1952)
 - (2) On 7th May, 1909, at Bloemfontein
 - (3) Electoral Quota Act, 1937 (Act No. 21 of 1937). The Census Act of 1910 (Act No. 2 of 1910) was amended by the Census Amendment Act, 1935 (Act No. 5 of 1935), Section 1 of which provided for a quinquennial enumeration up to 1941 and thereafter a decennial enumeration. Section 1 of the Electoral Quota Act substituted the year 1951 for 1941 as the date up to which quinquennial censuses were to be taken.
 - (4) See Appendix 7 for the costs of the various Commissions.
 - (5) Columns 7485-6, 1952 Hansard

Free State Goldfields, and even around more settled areas, the great increases in population which had taken place, of which Parow provided an excellent example.⁽¹⁾ In Britain, Canada and Australia statutory provision is made for ten-yearly delimitations, but it was argued that only five-yearly delimitations would give fair representation in South Africa because of the unrivalled development which was taking place and because of the concentration of mineral wealth.⁽²⁾ When this legislation was introduced by the United Party government in 1937, the proposal met with fierce opposition. They themselves put up an equally valiant fight to have the Electoral Laws Amendment Act of 1952 rejected when they were out of office, which would suggest that it is in the interests of the party in power to have a further delimitation delayed for as long a term as possible. ✓ It is interesting to speculate whether the results of the 1948 election would have been the same, had the original provisions of the Census Amendment Act of 1935 remained in force.

Under Section 38 of the Act, the commission, which was essentially judicial both in form and practice, was empowered to regulate its own procedure and in the course of time, a more clear expression thereof was given in the Reports. It would appear that the duties of the commission take up approximately six months. The Second Commission, which lasted for eleven months, explained that for only three months had its members been comparatively free from their judicial functions and been able to devote their full attention to the Report.⁽³⁾ The First Commission asserted that at the commencement of its labours, it thought it advisable to invite suggestions from public bodies, political organisations and other interested parties⁽⁴⁾ regarding the manner in which the various districts should be delimited. Information was also sought from magistrates and other officials.

(1) Under the 1947 delimitation scheme, the constituency had an electorate of 9,847 which had increased by 4,952 up to 31st March, 1952.

(2) Column 6772, 1952 Hansard

(3) Second Del. Com. Report, p. 29

(4) First Del. Com. Report, p. 16

All the many suggestions received were carefully considered. The various political organisations had submitted schemes for the delimitation of the whole of each Colony, and in some cases the schemes were worked out in considerable detail. Suggestions were received which affected particular localities. On the basis of all these sources of information, draft schemes were prepared for the respective colonies by their Commissioners and during a lengthy session held at Cape Town during January and February, 1910, these schemes were carefully examined. During this session, the preliminary publication of provisional schemes was mooted. This latter course had been adopted by the West-Ridgeway Commission in 1906 in the delimitation of the Transvaal, and since the Commission could not claim to possess local knowledge, such a course might prove to be highly advantageous. However, since the suggestion to modify the boundaries of one constituency could not be complied with without making changes elsewhere with which these affected constituencies could not agree, the publication of any provisional scheme was deemed impracticable. The political parties have in fact, up to the present day, come to realise that the Commission rarely departs from its provisional scheme.

The procedure adopted therefore was that meetings and representations by all parties were arranged without the nature of the draft being revealed. To effect this, an itinerary was planned, and the Commission were impressed with the display of interest and the marked ability in the manner in which views were presented. As a result thereof, the Commission made some modification in the draft, but in many cases the proposals coincided with the scheme drafted by the Commission. Alternative schemes had been prepared for a considerable section of the country districts in the Cape and the Transvaal, and a final choice was made as a result of the meetings.

Under the second commission, the tendency is already becoming apparent for the political parties to actively pursue a course of action to ensure a favourable delimitation. In

pointing out the procedure they had adopted in regard to the Witwatersrand area,⁽¹⁾ the Commissioners indicated how they determined to submit their two alternative provisional schemes to the representatives of the three political associations. Though no radical alterations were made in the draft scheme, they considered that some of the suggestions drawn from the three divergent opinions improved their plan.

In the fulfilment of their duties, the Third Delimitation Commission visited the capitals of the four Provinces as well as certain of the larger towns, including Johannesburg, Durban and East London. In each of these centres, they interviewed representatives of political parties and public bodies, individual citizens and deputations from the neighbouring districts, and received written representations too. More representations, written and oral, were made to this Commission than to their predecessors. These increases were attributed to the facts that a new political party had come into being since the holding of the Second Delimitation, and the organisation of Labour appeared to have made great advances in recent years. Personal interviews were found more satisfactory than written suggestions, which were often based on incorrect statistics. From all the provinces except Natal, proposed schemes of delimitation were received from the political parties, sometimes covering the whole province. The Commission thoroughly investigated these schemes and then framed their provisional scheme for each Province, which was again discussed with deputations and other persons interested. Useful information was obtained from magistrates and ex-magistrates regarding their districts.

The procedure adopted by the Fourth Commission followed the same pattern.⁽²⁾ They invited representations both written and oral from the various political parties and others. Thereupon,

(1) Second Del. Com. Report, p. 27

(2) Third Del. Com. Report, p. 13

(3)

provisional schemes were drafted and laid open for inspection. Deputations were again received before a final decision was reached. To gain first-hand information of the points at issue, the Commissioners visited East London, Bloemfontein, Pietermaritzburg, Durban, Pretoria, Cape Town and Johannesburg. As with the Second Commission, special consideration was given to meetings held to frame the scheme for the Rand. All interested parties were invited to discuss whether twenty or twenty-one seats were to be allotted to this area.⁽¹⁾

The Fifth Commission visited many towns and held meetings there, giving the public ample opportunity to put forward their views. It drafted provisional delimitation schemes which it submitted to the public and to political parties and public bodies. It received in its turn schemes which were submitted by the political parties. Representatives of the political parties explained the respective party schemes to the Commission⁽²⁾ and discussed with it any points arising therefrom. Written representations and petitions were also received from associations and individuals. In this way the Commission obtained valuable assistance in framing its final plan.

The Sixth Commission referred to public meetings which were held at Johannesburg, Durban, Port Elizabeth, East London, Kimberley and Dundee, and listed the sources from which they had obtained considerable useful information, mentioning private interviews, correspondence, representations by the various political parties and public bodies and by persons acting in a private capacity.

The Seventh Commission held its first meeting at Pretoria on 8th July, 1937. Public meetings were held at twelve centres, Pretoria, Johannesburg, Bloemfontein, Pietermaritzburg, Durban, Dundee, East London, Queenstown, Grahamstown, Port Elizabeth, Kimberley and Cape Town, and other places were visited to gain

(1) Fourth Del. Com. Report, p. 12

(2) Fifth Del. Com. Report, p. 5

local information. The Commission adopted the practice of automatically visiting the most important urban areas, and then towns of lesser importance where difficulty was experienced in arriving at a scheme of delimitation. Full opportunity was given to the public and to political parties to submit suggestions, and the Commission submitted its provisional schemes to each province for criticism. Ample advantage was taken of these offered opportunities.

Likewise the Eighth Commission held meetings in many towns, but in the main the work was carried out at the seat of the four Provincial Governments. The procedure adopted by the Commission was to invite the political parties to submit proposals at its first public meeting in a Province. Schemes were received from the parties, and on this occasion reference was made to the fact that the parties also submitted maps to illustrate their schemes. One of the parties in the Cape Province failed to submit a scheme, signifying its intention of confining itself to comments on the Commission's provisional proposals. After receiving suggestions at its first public meeting in a Province, a provisional scheme and sometimes two alternative schemes were drawn up. The draft or drafts were widely distributed and criticisms invited. Representations which were then made often proved to be most useful, being founded upon a local knowledge which the Commissioners could not claim to possess. All criticisms were carefully considered. The Commission found, however, that where proposals were made regarding isolated divisions only, the adoption of such proposals would have had disadvantageous results elsewhere. In regard to general schemes, suggestions which were logically and geographically permissible often had to be set aside on the grounds that they were statistically unsound. ⁽¹⁾

The Ninth Commission gave the clearest expression up to that date of the procedure adopted, and remarked that the practices which had grown up were in their opinion of considerable

(1) Eighth Del. Com. Report, p. 3

value. The Commission made its first real start on 28th July 1947 at Pretoria. In the same way as its predecessors, it held public meetings on arrival at the four capitals and at the larger centres such as Johannesburg, Durban, Kimberley, Port Elizabeth and East London. Advance notice of each meeting was published in the local newspapers and given to the representatives of the various political parties. The Commissioners asked for the submission of desired schemes and then drew up a provisional scheme or schemes and invited public criticism thereon. The Commission expressed the belief that full publicity had been given to their deliberations, of which the public took full advantage to bring the views of all sections of the community before the Commission. Personal visits were paid to certain rural towns and districts where changes were contemplated, but it was often found that local wishes had repercussions elsewhere.

The procedure adopted by the Tenth Commission in the fulfilment of its duties represented a culmination of the practices which had been steadily growing up, and which were amplified in certain respects by them. The procedure adopted by all the Commissions to date has followed the same course, no deviations of any significance having been witnessed. Newspapers were used more extensively to acquaint the public with the Commission's decisions at the different stages of their task. Their activities commenced at Pretoria on 15th July, 1952, and when the allotment of seats had been determined, the Commission announced its findings in the press. Thereupon, it proceeded to tackle each Province in turn.

Representatives of the political parties in the province in question were notified of a public meeting in the capital to hear evidence and receive representations. Notice of the meeting was given in the press, and all interested parties were invited to appear. After similar notifications, further public meetings were held in the larger centres, Johannesburg, Durban, Kroonstad, Port Elizabeth, East London and Kimberley. The parties submitted plans and maps, gave oral evidence and made

criticisms of their opponents' plans. The Witwatersrand again posed a problem, and the meeting in Johannesburg on this area lasted for three days.

Another aspect of the procedure to which the Commissioners drew special attention was the travelling which was done to provide the Commissioners with first-hand information, and reference was made for the first time to the use of air transport. Local tours were undertaken in the larger cities with representatives of the political parties, and the Commission acknowledged their indebtedness to the local knowledge of the political parties. Tours were also made in the company of electoral officers and independently by the Commission. The O.F.S. was toured by car, particular attention being paid to Kroonstad and the goldfields. The Defence Department placed an aeroplane at the disposal of the Commission for use in the Transvaal, Natal and the Cape which proved to be of great assistance in deciding what was to be included in the urban electoral divisions. The topography of the rural areas of these three provinces was studied from the air, and this practice proved most helpful in determining what were the natural features, communications, density and sparsity of population and to a certain extent, vegetation and the nature of farming activities.

After the tours, a provisional delimitation scheme was prepared by the Commission. Ample notice was given, and the schemes were made available for inspection by the public and the political parties in each provincial capital, after which a further public meeting was held in each province. Full use was made of the meetings, and the Commission effected some improvements to their provisional schemes. The Commission made reference to the representations made by the "War Veterans' Torch Commando"⁽¹⁾ which presented a memorandum with statistics,

(1) Tenth Del. Com. Report, p. 7

graphs and histograms. They did not find that the memorandum afforded them any assistance, as they contended that the statements contained therein were often based on a misconception of the delimitation provisions of the South Africa Act.

It is apparent by this time that the Commissioners rely to a great extent on the comprehensive plans submitted by the political parties as the major source of suggestions and recommendations. This does not mean that they do not frame an independent scheme of their own as divisional groupings suggest themselves. Here the judges call upon the Electoral Officer of the area concerned to point out areas which would yield desired numbers of voters. From the outset, there was no sign of apathy in regard to delimitation, and by the time of the Tenth Commission, the accepted practice is that the political parties are occupied for several months on their plans before the appointment of the Delimitation Commission. A scheme covering a whole province is more likely to find favour with a Commission than isolated recommendations from private individuals which leave the Commissioners to smooth out the difficulties which result therefrom elsewhere. Accurate statistical information is necessary before an acceptable scheme can be formulated,⁽¹⁾ which would suggest that no start could be made on the party plans until the Commission have announced which voters' list it will use. In practice, however, the parties have shown themselves capable of making fairly judicious guesses, and are rarely more than 50 out in their estimated Provincial quotas. The finishing touches are put to the party plans when the Electoral officers furnish them with details of the voters at the chosen date in every polling district. In the absence of the necessary statistical information and a complete understanding of the provisions of the South Africa Act, their labours would be fruitless, and their

(1) See p. 14, para. 23, Third Del. Com. Report

recommendations of little assistance to the Commissioners. The different constituencies are built up of polling districts varying in number according to the density of the population,⁽¹⁾ and the parties must be able to set out the number of voters in each polling district to substantiate their recommendations.

The procedure having become so specialised, it is clear that the suggestions of private individuals are likely to be valueless, and in fact the Commission makes little reference to such. In the case of New Zealand, the form of the Representation Commission Reports demands that the name and address of the body or person lodging an objection to a provisional plan and the verdict of the Commission thereto shall be appended to the Report. The Schedule to the 1946 Report reveals that there were several instances of individuals,⁽²⁾ supported^{as} in one case⁽³⁾ by 167 other private persons, lodging complaints; but even these were mostly regarding the renaming of divisions, and very few of them are acceded to. During inter-election periods, the party Organisers keep their fingers on the pulse of public opinion in every polling district and when delimitation comes around, they have a sound idea as to how each Polling District will vote.

The public are kept informed of the different stages of the procedure by such devices as the publication by a particular party in its party newspaper of an abridged version of its scheme and a small-scale reproduction of its map.⁽⁴⁾ A vital decision of the Commissioners in so far as the parties are concerned is the selection of the seat or seats, if any, to be eliminated. If the Commissioners' choice coincides with that of one of the parties, that party's plan will necessarily have to be followed to a great extent throughout. As a decision is reached by the Commissioners regarding a particular division, a verbal description and map of the constituency concerned will be found in the

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- (1) Boksburg (Transvaal) - 2 polling districts; Kuruman (Cape),
56 polling districts
(2) 1946 Report of the Representation Commission (New Zealand),
(3) ditto, p. 5 pp. 4-12
(4) "Die Kruithoring" dated 6th November, 1952, pp. 1 and 6

daily press, usually accompanied by some forecast as to the probable party successes at the ensuing election. Certain well-informed individuals have been able to give amazingly accurate forecasts of election results, and the period over which the Delimitation Commission sits can be regarded as an election preview both from the point of view of public interest and party activity. At the present day, the facts which come to light during delimitation largely obviate any element of surprise from the actual general election results, for even a landslide in public opinion would most likely have become apparent during such time. The actual working of the provisions of the Constitution relating to delimitation have naturally been conditioned by the political party factor in modern government. In establishing the broad outlines, it is unlikely that the National Convention foresaw the rôle the political parties would play, particularly in the light of the uncertainty at that time of the party line-up after Union.

The nature of the information the Reports were to provide was laid down in the Act.⁽¹⁾ In accordance therewith, appendices to the Reports indicate in an alphabetical list the names of the electoral divisions. Further alphabetical lists of such divisions give descriptions of boundaries in the Cape, Natal, the Transvaal and the Orange Free State respectively.⁽²⁾ Finally, maps^{which} are provided in respect of each of the Provinces are listed, it being found necessary to submit larger scale maps for the densely populated urban areas. The manner in which the report itself was set up has shown little change throughout the period.

At the outset, the Commissioners state under what sections of the Act they derive their authority and comment on any amendments thereto. The First Commission established that their duties had been set out in sections 38 to 40 and section 42 of the principal Act. The Second Commission were bound by sections 32 to 34 and

(1) Section 42(1) South Africa Act

(2) Section 42(1)(a) Ibid.

38 to 43 respectively. This increase in the number of relevant clauses was due to the fact that the first allocation of seats had been arbitrary, whereas provision was made for an increase in the number of members under certain conditions at future delimitations. The four succeeding Commissions confined themselves to the assertion that they had been appointed under Section 41 of the principal Act. A minor amendment was made to Section 41 before the appointment of the Seventh Commission.⁽¹⁾ The words "quinquennial census" were deleted and the phrase "census referred to in paragraph (ii) of section thirty-four" substituted. In addition, women voters were to be taken into account in the redivision of any province into electoral districts.⁽²⁾ Certain further amendments had been made to the relevant clauses prior to the appointment of the Eighth Commission. Under the Electoral Laws Amendment Act, 1940, Section 40(1) was amended⁽³⁾ to read:-

"40(1) For the purpose of any division of the provinces into electoral divisions, the quota of each province shall be obtained by dividing the total number of voters in the province as ascertained from an examination of the current voters' lists and if the commission is appointed in a year in which a biennial registration of voters is commenced, every list of voters which has been framed for the purposes of that biennial registration and has been revised and certified by the revising officer in accordance with the provisions of the Electoral Act, 1918 (Act No. 12 of 1918), as amended, by the number of members of the House of Assembly to be elected therein."

The Act also stated that

"Section forty-one of the South Africa Act, 1909, as amended, is hereby amended by the substitution for the words 'same powers and proceed upon the same principles as are by this Act provided in regard to the original division' of the words 'powers and proceed upon the principles set forth in sections thirty-four, thirty-eight, thirty-nine and forty'".⁽⁴⁾

More extensive changes were made under the Electoral Quota Consolidation Act, 1942. Sections 33 and 34 were repealed⁽⁵⁾ and Section 1 of the Act substituted a new Section 32 of the South Africa Act. The Act aimed at consolidating laws relating

(1) Under Section 2 of "The Census Amendment Act, 1935" (Act No. 5 of 1935)

(2) Under Section 2 of "The Electoral Quota Act, 1937" (Act No. 21 of 1937), repealing Section 3 of the "Women's Enfranchisement Act" (Act No. 18 of 1930)

(3) Section 22 of the "Electoral Laws Amendment Act, 1940" (Act No. 20 of 1940)

(4) Section 23, Act No. 20 of 1940 (5) Section 4 of "The Electoral Quota Consolidation Act" (Act No. 30 of 1942)

to the determination of the number of members of the House of Assembly to be elected in each Province and the division of the Union into electoral divisions. Section 41 of the South Africa Act as amended above was deleted and the following new section⁽¹⁾ substituted:-

"41. (1) In this section the expression 'adult Union nationals' means persons (whether males or females) of the age of twenty-one years or over, who are Union nationals or deemed to be Union nationals in terms of the Union Nationality and Flags Act, 1927 (Act No. 40 of 1927).

(2) As soon as may be after every census which the Governor-General-in-Council was obliged to cause to be taken in terms of section three of the Census Act, 1910 (Act No. 20 of 1910), the G.G.in C. shall appoint a delimitation commission consisting of three judges of the Supreme Court of South Africa, which shall divide each province of the Union into so many electoral divisions that their number bears, as nearly as possible, the same ratio to one hundred and fifty, as the number of European adult Union nationals in the province in question (as ascertained by means of the said census) bears to the total number of European adult Union nationals in the Union, as ascertained by means of the said census.

(3) In dividing a province into electoral divisions in terms of sub-section (2) the said commission shall act in accordance with the provisions of section 40."

The Electoral Quota Consolidation Act also consolidated legislation pertaining to the taking of a census. The provisions regarding the taking of a census throughout the Union in 1911 and from time to time thereafter for the purposes of delimitation of electoral divisions were set out in the Census Act, 1910.⁽²⁾ The census was to be of the population of the Union and any other particulars whatsoever that might be prescribed by regulation. The 7th May, 1911, was appointed by the Governor-General as the first census day. Act No. 15 of 1918 provided for the taking of a census in May, 1918, to be regarded as the quinquennial census, the next census to be taken in 1921. The Census, Delimitation and Electoral Act, 1941,⁽³⁾ amended the Census Act of 1910, made special provision regarding the 1941 census, defined the duties of

(1) Section 2 of "The Electoral Quota Consolidation Act" (Act No. 30 of 1942)

(2) Act No. 2 of 1910

(3) Act No. 23 of 1941

the delimitation commission appointed under Section 41 in respect of persons so included,⁽¹⁾ and made special provisions regarding the compilation of voters' lists under the Electoral Act of 1918 because of war conditions. The Commission was to take into consideration the number of European adult Union Nationals who had been included in the census for each province in accordance with the provisions of section three of the Act, when determining under section 34 of the South Africa Act, the number of members of the House of Assembly to be elected in each such province.⁽²⁾ With the exception of sections two and thirteen, the Act was to expire on the date fixed by the Governor-General. In 1942,⁽³⁾ provision was made for ten-yearly censuses after those taken in the years 1946 and 1951. It was therefore found necessary to legislate on the frequency of delimitations in 1952 to clarify the position. The Eighth Commission, in view of these amendments, established that it was appointed under Section 41⁽²⁾ as substituted by Section 2 of the Electoral Quota Consolidation Act, 1942, to carry out any redelimitation in terms of Section 4 of the Census, Delimitation and Electoral Act of 1941 and Sections 32, 40 and 41 (as amended) and Sections 38, 39 and 42.

A further amendment was made to Section 40 in 1946,⁽⁴⁾ prior to the appointment of the Ninth Commission, in that the words "and if the commission ...(Act No. 12 of 1918) as amended"⁽⁵⁾ were deleted. Similarly, the Electoral Laws Amendment Act, 1952⁽⁶⁾ substituted a new section for Section 41 of the South Africa Act,⁽⁶⁾ so that the Tenth Commission were nominated in terms of the provisions of Sections 32, 40 and 41 as amended and sections 38, 39 and 42 of the South Africa Act.

Clauses 38 to 42 inclusive of the South Africa Act cover

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- (1) Section 4 of Act No. 23 of 1941 (2) See p. 88 ^{below} ~~above~~
(3) Section 3 of Act No. 30 of 1942
(4) Section 1 of "The Electoral Laws Amendment Act, 1946"
(Act No. 10 of 1946)
(5) Section 1 of "The Electoral Laws Amendment Act, 1952"
(Act No. 55 of 1952)
(6) See Appendix 5

the provisions for the actual delimitation of constituencies as distinct from the provision regarding the composition of the House of Assembly.⁽¹⁾ Three of the five clauses, 38, 39 and 42, have undergone no amendment at all since the passage of the Act. Furthermore, sub-sections (2) and (3) of section 40 have undergone no change. The five factors listed under sub-section (3) of Section 40 constitute that part of the provisions which afford the judicial commission the greatest discretionary power, and they have been maintained in the same form and in the same order as first brought up by the Drafting Committee at the National Convention on 3rd November, 1908. It follows, therefore, that the amendments made to these provisions have affected only Sections 40(1) and 41, which are concerned with the numerical aspect of the delimitations.

(1) Covered by Section 32 as amended

CHAPTER FOUR

THE APPLICATION OF THE NON-DISCRETIONARY PROVISIONS
REGARDING THE DELIMITATION OF CONSTITUENCIES

The first stage in the process of delimitation is the determination of the number of electoral divisions in each province. The provisions established under the Act in this regard remained in force until the Seventh Commission. A further change preceded the appointment of the Tenth Commission. It is of interest to estimate how far the rural bias in politics affected the determination of the basis for the allocation of seats. Under the New Zealand Constitution, a rural bias revealed itself in two ways prior to 1945. In the first place, there was a country quota,⁽¹⁾ and in the second place seats were allocated according to the distribution of the total population. There was considerable outcry when in 1945 statutory provision was made for a change from the total population basis to that of the adult population. It is significant that this amendment was made at the same time as the country quota was abolished.

The loading device was also found in the South Africa Act, but without its natural concomitant of the total population basis. Such a basis is in fact only equitable where the number of voters in each constituency bears a fairly even ratio to its total population, which conditions did not prevail in South Africa at the time of Union. The adoption of the adult population basis, as had been done in the Transvaal⁽²⁾ and the Orange River Colony,⁽³⁾ probably represented concessions to the English section of the population to secure their support in the cause of Union, being indeed a corollary of the "one vote one value" principle. In speaking of the adult population of South Africa, only the white

(1) It first appeared in 1881 to the equivalent of an addition of 33-1/3 per cent to the country population.

(2) Section 1, Schedule III, CD. 3250

(3) do., CD. 3526

population is envisaged. In two of the original colonies, there was no colour bar in regard to voter qualifications, but the inclusion of the Native population in the calculation of the allocation of seats was not seriously considered,⁽¹⁾ though the framers of the Constitution had before them the precedent established by the United States where representatives were to be apportioned⁽²⁾ among the several states according to their respective numbers, to be determined by "adding to the whole number of free persons ... three-fifths of all other persons".⁽³⁾

In 1936, the Cape Natives were put on a separate voters' roll,⁽⁴⁾ and in light of recent attempts, it is likely that the same practice will be followed with regard to Coloured voters. Since after 1952, the allocation of seats is on the basis of white registered voters, any inclusion of the Native population in this calculation is clearly not envisaged, though one suggestion put forward contemplates the inclusion of the Coloured voters in the calculation of the Union quota.

This first step had been covered for the first delimitation by section 33 of the South Africa Act which gave 51 seats to the Cape, 36 to the Transvaal and 17 to both the Orange Free State and Natal. Provision was made for an increase in membership, but there was to be no diminution therein until the number of members of the House of Assembly in respect of the four provinces reached 150 or until ten years had elapsed after the establishment of Union, whichever was the longer period. When the Second Commission met, changes they might make in the allocation of members could involve only increases. The statutory provisions for allocations are found in Section 34, sub-sections (ii), (iii) and (iv). The quota of the Union had been fixed at 2,891⁽⁵⁾ and would so remain subject to amendment of the Act, in conformity with the provisions of Section 152. The number of the European male adults in each province as revealed by the preceding census was compared with the number of European male adults as at the

(1) There was some dissatisfaction in the Cape over the omission of the Native population from this calculation. See p.26, Cape Hansard, 1909.

(2) Article I, section 2 of U.S. Constitution of 1787.

(3) Meaning slaves.

(4) Representation of Natives Act (Act No. 12 of 1936)

1904 census. Where an increase was shown which was equal to the quota or any multiple thereof, an additional member or members was/were to be allocated. The 1911 census figures revealed a decrease in population in the Cape and Natal and increases in the Transvaal and the Orange Free State. No additional allocation could be made to the Free State until the population reached 52,038 and with the former two provinces protected under the Act against any decrease, the only change in membership was in regard to the Transvaal which acquired nine additional members on the basis set out above, bringing her total up to 45.

The Commission established that had the Union Quota or the electorate been taken as the basis of representation, the Cape figure would have remained at 51 whereas the Transvaal would barely have reached 40. With a House of 130 members, if the allocation of members were made on the principle of equal electoral areas, the number of representatives for each province would be 58 for the Cape, 45 for the Transvaal, 16 for the Free State and 11 for Natal. Though there was equal treatment meted out to the four provinces in regard to the practical division of the constituencies, the Commission emphasised how the foundations upon which the system was built were numerically unfair, which was an anomaly from the point of view of the principle behind five-yearly redistributions.

The Third Delimitation Commission had to take into consideration certain temporary provisions made with regard to the census taken on 5th May, 1918, which was to be regarded as the quinquennial census of 1916.⁽¹⁾ The census was to include all European male adults domiciled in the Union at the date of the beginning of the war who were on active service.⁽²⁾ The

(5) from previous page: Section 34, sub-section (1). Arrived at by dividing the number of European male adults as at the 1904 census by the number of members in the House of Assembly in 1909.

(1) "The Electoral Census Further Provision Act" (Act No. 15 of 1918)

(2) Section 2(4), Act No. 15 of 1918

Director of Census estimated that he had not got more than half the European male adults contemplated in this provision. He apportioned to the various provinces 18,478 but 4,703 could not be traced, so it was left to the Delimitation Commission to determine the process of allocation, if any, to the different provinces. The Commission felt, however, that they were bound by the statutory provisions as to their powers and duties, which laid down that European male adults in the regular forces on full pay were to be counted in the census⁽¹⁾ - which represented a departure from Section 34(vii) of the Act; but the South Africa Act also stated that the census was to disclose the European male adults "in each province", and as the latter fact was missing with regard to the 4,703, the latter were left out of the Commission's calculations. Their inclusion would have had the effect of the allotment of one further member to the Transvaal. While Cape figures still represented a decrease upon those of 1904, Transvaal increases of 39,505 European male adults since 1904 entitled the latter to 49 members. The National Convention had never envisaged one of the Provinces losing 15,911 of its European male adults as the Cape had done in seven years. This loss had operated with peculiar hardship upon the Cape, as even its reduced numbers of 1911 were sufficient to give it 51 members on the basis of the Union quota. There were no means of redress of Cape inequality until the total of the members of the House of Assembly was 150 or unless Parliament exercised its powers under Section 152 of the South Africa Act. The Commission felt that it was likely that the Orange Free State would secure additional membership at the next delimitation, but this did not prove to be the case, and at the fourth delimitation, for the third time the Transvaal alone secured additional membership, bringing up her total to 50. The latter province needed only

(1) The Electoral Divisions Redelimitation Amendment Act
(Act No. 31 of 1918)

369 European male adults to entitle her to the same number of members as the Cape. The composition of the House then stood at 135.⁽¹⁾

On the calculations of the Fifth Commission, the membership of the House was increased to 148, which was the largest increase to be made at any single delimitation. For the first time the Transvaal, which acquired 5 additional seats, was not the only recipient of additional representatives, for seven seats were allotted to the Cape and one to the Orange Free State. It seemed probable that the maximum composition of the House would be reached at the following delimitation.

When the maximum membership was reached in 1932, two of the provinces experienced a diminution of their original membership. Natal and the Orange Free State were reduced to 16 members each, while 61 were allotted to the Cape and 57 to the Transvaal. Section 33 had been interpreted by the Commissioners in such a way that no province had its original membership reduced until, the maximum having been reached, re-allocation was impossible in any other way. From this time onwards, the upward trend of population in one province was bound to have repercussions in some or all of the other provinces who would be called upon to sustain a loss to counter an increase in membership elsewhere.

With this development, the reason for the retention of the provincial boundary lines in the scheme of delimitation no longer held good. The calculations undertaken by the Seventh Commission differed from those of its predecessors owing to the amendment of Section 34 of the principal Act.⁽²⁾ to read that the total number of European Adult Union Nationals,⁽³⁾ both

(1) Cape 51; Natal 17; Transvaal 50; Orange Free State 17

(2) Section 1 of "The Electoral Quota Act, 1937" (Act No. 21 of 1937)

(3) In terms of Section 41 (1) of the South Africa Act as amended, the expression "adult Union Nationals" means persons, whether male or female, of the age of 21 or over who are deemed to be Union Nationals in terms of Section 1 of the Union Nationality and Flags Act, 1927

males and females, as ascertained at the 1936 census, should form the basis of their calculations. Under the South Africa Act all European male adults, including aliens, but excluding members of British garrisons and naval personnel, had been counted in the calculation, whereas after 1937, aliens were to be omitted.

The 1936 Census figures included Walvis Bay and the Islands. The total of European adult Union Nationals under the 1936 Census was 1,114,598 and the division of this figure by 150 gave a Union quota of 7,431, in terms of the definition contained in Section 34 of the South Africa Act, as amended by the Electoral Quota Act, 1937. By dividing the number of European adult Union Nationals in each province by 7,431, the resultant quotient was the number of members to the House of Assembly to which each Province was entitled. On this basis, the Cape lost two members giving a final figure of 59, Transvaal gains brought its total to 60 from 57 and for the first time the Transvaal representation exceeded that of the Cape. The Natal numbers remained static, the third seat the Transvaal gained being at the expense of the Orange Free State. This was the first delimitation at which no extra seats were available for distribution, but gains in one province had to be balanced against losses elsewhere, so that alterations following re-allocations would be twofold. The three seats allocated to Native Representatives⁽¹⁾ were not included in the calculations.

The Eighth Commission established that the Transvaal had shown a considerable increase⁽²⁾ and was allotted four extra seats at the expense of the Cape and the Orange Free State, who lost three and one respectively.

The Ninth Commission reported that the same trend was evident as under the previous Commission. The Transvaal had a gain of two seats at the expense of the Cape and the Orange Free State, who both lost one seat. The Commission was in agreement with its predecessors that the 646 European adult Union Nationals of Walvis

(1) Section 13(b) "Representation of Natives Act, 1936" (Act No. 12 of 1936)

(2) Provincial figures as at the 1941 census were:- Cape 464,175; Natal 130,381; Transvaal 523,071; O.F.S. 111,903. Total 1,229,530

Bay should be included with the Cape figures, but on this occasion their inclusion did not affect the allocation of seats in any way. Under the Fifth Commission, there was the anomalous situation of this small number of Union Nationals involving the difference of one seat to the Cape Province.

In determining the division of the 150 seats between the four Provinces, the Tenth Commission not only had to exclude those seats allocated to the Native Representatives but also those allocated to South West Africa.⁽¹⁾ The quota of seats was to be determined as under Section 41 of the South Africa Act as amended.⁽²⁾ By 1949,⁽³⁾ the term "Union National" was obsolete, and the Union quota was now to be arrived at by dividing the total number of white voters as shown in the current voters' lists, duly corrected to the latest possible date, by 150. The current voters' lists were defined as those prepared under the provisions of the Electoral Consolidation Act⁽⁴⁾ and corrected from time to time in terms of section 18 of that Act, as amended.⁽⁵⁾ The Commission ascertained from the Secretary for the Interior, in his capacity as Chief Electoral Officer, that the lists had been corrected up to 30th April, 1952, and that the lists to 30th May could not be duly corrected before the end of August. Whereupon, the Commission accepted 30th April, 1952 as the latest possible date for the corrected current voters' lists, and this was the figure upon which the delimitation was based. The total number of white voters in the Union was 1,539,802, which gave a Union quota of 10,265.35. On this basis, the Cape was allotted 54 seats, Natal 15, the Transvaal 68 and the Orange Free State 13.

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- (1) "South West Africa Affairs Amendment Act" (Act No. 23 of 1949)
 - (2) By Section 1 of "The Electoral Laws Amendment Act of 1952" (Act No. 55 of 1952)
 - (3) "The South African Citizenship Act, 1949" (Act No. 44 of 1949)
 - (4) "The Electoral Consolidation Act, 1946" (Act No. 46 of 1946)
 - (5) By Section 8 of "The Electoral Laws Amendment Act, 1948" (Act No. 50 of 1948) and Section 2 of Act No. 55 of 1952

The main reason offered for no longer having delimitation tied up with the census was that delimitations had taken place over a year after each census was held⁽¹⁾ so that the figures revealed were not sufficiently up-to-date.⁽²⁾ Criticism was aimed at the change in view of the fact that there was always a lag between actual registrations on the roll and the number of adult Union Nationals in any area⁽³⁾ so that the inaccuracy under this new system would be even greater. Former Commissions had provided statistics showing discrepancies between census figures and the number of people registered as voters,⁽⁴⁾ and had found the explanation in faulty registrations, accepting the assurance of the Director of Census that such big mistakes could not have been made in the census figures.

On the assumption that the census figures were the more accurate, an allocation of seats based thereon would be more equitable. Some saw in these provisions a major departure from the South Africa Act. "The Union quota still exists in the South Africa Act, but for all practical purposes it has lapsed."⁽⁵⁾ The amendment fixed the quota not on a Union basis but on a provincial basis at one step, since previously the Union quota had been based on population figures as revealed by the preceding census, whereas it was the provincial quota which was established on the basis of the voters' rolls. After the passage of the amendment, the only distinction between the method of establishing the Union and Provincial quotas was that only white voters figured in the former calculation, whereas for the latter, in the case of the Cape and Natal, Coloured voters were also included. The

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- (1) Column 6763, 1952 Hansard (2) cf. 1951 census figures with the number of voters in the 1953 General Election.
(3) Column 6768, 1952 Hansard
(4) See Fourth Del. Com. Report, p. 4. In the Transvaal, excluding the Rand and the six Pretoria seats, there were at this date 106 voters for every 100 male adults. In the Orange Free State country districts, there were 102.83 voters for each 100 qualified adults. In the Cape, only 75.44 per cent. of the European male adults in the Peninsula were registered as voters while registration figures for the remainder of the Cape embraced 96.89 per cent. of the European male adults.
(5) Column 7476, 1952 Hansard

degree of difference between the two quotas in each province would depend upon the number of Coloured voters therein and the extent to which the number of voters exceeded the multiple of the number of seats allotted to it.⁽¹⁾

In support of the change it can be said that it simplified the procedure to base all calculations on the voters' rolls, and did not constitute so drastic a departure from principle, since the Union quota was based on the number of European adult males and later Union nationals, both male and female, and not the total population. The number of South African citizens nearly approximates to the number of white registered voters. The latter exceeded the former at the 1953 General Election, being based on more up-to-date figures than the 1951 census. The process by which the Union quota was determined involved no exercise of discretion, but was a matter of pure mathematical calculation. This was also the case with regard to the determination of the four provincial quotas.

Under Section 39 of the South Africa Act, the commissions were to divide each province into electoral divisions, each returning one member. The first step in effecting this division was to establish a quota for each province,⁽²⁾ "by dividing the total number of voters in the province, as ascertained at the last registration of voters, by the number of members of the House of Assembly to be elected therein". The word "European" does not occur in the provisions regarding the Provincial quota in view of the fact that in two of the colonies, Non-Europeans were to be found on the common voters' roll.⁽³⁾

When the first Commission met they considered the best method of carrying out the provisions of the Act with particular reference to section 39 and 40. To ascertain the quota raised the problem as to what construction was to be put on the words

(1) The Provincial quotas of the four provinces as at the Tenth Delimitation were Transvaal 10,193; Natal 10,477; O.F.S. 10,509; Cape 11,132

(2) Section 40(1) of the South Africa Act, 1909

(3) cf. method of arriving at Union quota

"the total number of voters ... as ascertained at the last registration of voters". The lack of uniformity of conditions in the four provinces made this difficult and prevented absolute accuracy being achieved. In the Cape and the Transvaal, a registration had just been completed before the Commission met. The register in force in the Orange River Colony was that of 1907 which had been declared defective and obsolete. The new register resulting from the first biennial registration was not completed until August, 1910 and the judges dismissed as impracticable the idea of postponing the starting-point of their work, but intimated their wish to get the results of the new registration as soon as possible. The new register eventually revealed that no material changes in their recommendations seemed requisite. It showed an increase of 2,000 voters which would have raised the quota by 120 voters. The Natal register was a recent one, but inaccurate and unsatisfactory. A new list was hurriedly completed by the middle of December, but its results were remarkable. ⁽¹⁾ The Commission felt that if all unqualified persons had been eliminated, the total would have been considerably reduced. So as with the Orange River Colony, while the Commission did not ignore the new register, it was not thought necessary to change their former recommendations. If the franchise for the Cape had been the same as elsewhere, the quota would have been substantially higher. The Commission then proceeded to set out the respective quotas ⁽²⁾ as established by them on the basis of section 40, showing the minimum and maximum figures permissible for the respective provincial constituencies on the basis of a departure from quota to the extent

(1) P. 5, First Delimitation Commission Report				(2) p.11, ditto		
			<u>Minimum</u>	<u>Quota</u>	<u>Maximum</u>	
Cape	...	...	2,372	2,791	3,210	
Transvaal	...	...	2,308	2,715	3,122	
Natal	...	...	1,400	1,647	1,894	
Orange River Colony	..		1,811	2,131	2,451	

of fifteen per cent. either way. The figures ranged from a quota of 1,647 for Natal to one of 2,791 for the Cape, which resulted in a difference of 1,761 voters between the most heavily loaded Cape seat, Cape Town (Castle), and Zululand division in Natal with the biggest unload in the latter province. (1) *figure!*

Under the First Delimitation Commission the Provincial quotas had in every case been below the Union quota, whereas at the second delimitation that of the Cape exceeded it, while the Transvaal Provincial quota had decreased by 158. The quota at the Cape and in the Transvaal had at the first general election been very similar. These discrepancies in 1913 were caused by the two different methods of arriving at the quotas, and from the mere statistical point of view, represented unfair treatment of the Cape electorate. While there had been an increase in the number of registered voters in the Cape exceeding one-third of the corresponding increase in the Transvaal, because of a decrease in the Cape in the number of European male adults to an extent of 15,911, no new seats had been received as against the Transvaal nine. The quota of Natal and the Orange Free State stood at 1,729 and 2,342 respectively.

Under the Third Delimitation Commission, the figures used were those of the registered voters at the registration of 1919 in each province. Increases had been made in each Province on the number of voters on which the second delimitation was based. (2) The number of representatives allocated to the Cape had remained stationary since 1910, whilst Transvaal members had increased from 36 to 49. This factor accounted for the great increase in the quota of the Cape as compared with that of the Transvaal. The Transvaal quota in 1919 stood at 2,869 and that of the Cape at 3,655. The Electoral Act, 1918, (3) sought to impose more uniformity on registration laws, and the Fourth Commission were

(1) See pp. 28 and 41, First Del. Com. Report

(2) The increases on 1913 figures were Cape 37,849, Transvaal 25,529, Natal 3,572 and the Orange Free State 7,665. p.11, Third Del. Com. Report

(3) The Electoral Act, 1918 (Act No. 12 of 1918)

called upon to decide whether the "last registration of voters"⁽¹⁾ implied the biennial registration or that registration as amended by supplementary registration. It was determined that the biennial registration lists which came into force on 1st August, 1921 and the supplementary registration lists which came into force on 12th August, 1922 should form the basis of the delimitation.

The four provinces had shown an increase in the number of their registered voters. The Cape Provincial quota exceeded that of the Transvaal by over 1,000, and that of Natal showed a considerable decrease on the Transvaal figure, whereas the quotas of the Transvaal and the Orange Free State more nearly approximated one another.⁽²⁾ The Commission felt that these figures called for an inquiry into the reasons for the discrepancies between the quota of the Cape and the Transvaal, and found the reasons lay in several factors. They estimated that four-fifths of the difference was due to the inclusion in the Cape of 41,086 non-European voters. On the other hand, the Cape franchise was restricted by qualifications and, in the Transvaal, there was a 2.4% higher registration of European adult males as voters.

The Fifth Delimitation Commission confined themselves to setting out the various quotas without further comment thereon. By 1928, the Cape quota stood at 3,381, Natal at 2,259, the Transvaal at 2,506 and the Orange Free State at 2,641. The Sixth Delimitation Commission based their calculations on the 1931 registration, and because of the loss of one seat each by Natal and the Orange Free State their respective quotas showed a considerable increase, Natal's rising to 2,832 and that of the latter Province to 3,145. The two remaining quotas also represented an increase on 1928 figures, and the difference between the highest and lowest figures was around 700. In the Cape and the Free State, which sustained a decrease in representation in the House of Assembly

(1) Section 40, South Africa Act

(2) Cape 3,863; Natal 2,035; Transvaal 2,824; O.F.S. 2,884

in 1937, the provincial quotas under the Seventh Commission were the highest, that of the Free State even exceeding the Cape quota, whereas the Natal and Transvaal figures were almost the same, and over 1,000 less than the two higher figures. ⁽¹⁾

The four quotas were double those of the preceding Commission on account of the inclusion of women voters ⁽²⁾ in the calculation.

The issue of the meaning behind the phrase "as ascertained at the last registration of voters" was re-opened by the Seventh Commission. In taking into account the supplementary lists, the Commission arrived at the same conclusion as the Fourth Commission. The main lists used were those of voters enrolled in the 1935 biennial registration along with combined January, 1937 supplementary lists. ⁽³⁾ These latter lists incorporated the previous three supplementary registration lists, which came into operation on 15th March. All voters whose names had been removed up to and including March, 1937 were excluded.

With the Eighth Commission, the current voters' lists were deemed to be the 1941 main lists and the January, 1942 supplementary voters' lists as adjusted by returns received up to and including May, 1942. As at 1942, the Cape quota was considerably larger than that of the other three provinces, ⁽⁴⁾ between which there was no great disparity, and this was largely due to the inclusion of 43,093 Coloured voters. If the Coloureds had not been taken into consideration, the Cape provincial quota would have been 8,135. The Cape lost three seats under the Eighth Delimitation, while its quota was fixed at a figure exceeding that of any other Province by about 1,000, due to the fact that the Coloured voters were not counted for the purpose of the allotment of seats. Although there was a non-European vote in Natal, the number of voters amounted to only 654.

(1) Cape, 7,077; Natal, 5,850; Transvaal, 5,996; O.F.S. 7,321

(2) Act No. 21 of 1937

(3) Supplementary lists completed at four-monthly intervals in the months of January, May and September

(4) Cape, 8,905; Natal 7,515; Transvaal, 7,956; O.F.S. 7,846

In establishing the quota at the ninth delimitation, the current voters' lists were regarded to be the lists framed in 1946 and amended by the electoral officers, under the provisions of the Electoral Consolidation Act,⁽¹⁾ up to and including May, 1947. The figures for the Provincial quotas showed an all-round increase. The lowest quota was again that of Natal, with 8,402 registered voters, and the Cape was again the highest with 9,508 registered voters. The Transvaal and the Orange Free State had quotas of 8,769 and 8,909 respectively. So between the maximum quota for the Cape and the minimum quota for Natal there was a difference of 3,792. The Tenth Commission considered that the 30th April lists duly corrected should be accepted as the "Current Voters' lists". The figures for the Transvaal and the Orange Free State tallied with those used for the calculation of the Union quota, whereas in the Cape and Natal the figures were increased by the addition of Coloured voters numbering 47,008 and 1,190 respectively. Increases on the respective 1947 quotas ranged from 1,424 to 2,075. As at 1952, the maximum limit was 12,802 in the Cape and the minimum was the Transvaal's 8,665, a difference of 4,137.⁽²⁾

Though the manner of arriving at the Provincial quota has undergone no change since 1910, the Provincial quota itself has been considerably affected by changes made to the Electoral Laws in 1930⁽³⁾ and 1931.⁽⁴⁾ At the National Convention, no uniform franchise could be agreed upon. The South Africa Act provided that Parliament could prescribe the qualifications for voters under certain conditions, but until such time, the laws prevailing in the four colonies were to remain in force. In the Transvaal and Orange River Colony there was European Manhood suffrage, while in the Cape and Natal there was no colour bar, but a property

(1) Section 18 of Act No. 46 of 1946

(2) The 1952 Provincial quotas:- Cape 11,132; Natal 10,477; Transvaal 10,193; O.F.S. 10,509

(3) Section 1, "Women's Enfranchisement Act, 1930" (Act No. 18 of/ 1930)

(4) Section 1, "Franchise Laws Amendment Act, 1931" (Act No. 41 of 1931)

qualification and education test. In 1930, all white women were enfranchised, and this had to be countered in the following year by providing for full European adult suffrage to raise male rights to the same level. The property qualification, however, still remained for the Coloured voters. The Electoral register was more than doubled in 1930/1931, and the ratio between white and non-white voters increased. The Women's Enfranchisement Act of 1930 stated that women who were registered as voters were not to be taken into account in the redivision of any province into electoral divisions.⁽¹⁾ In 1937,⁽²⁾ this provision was repealed, and at the seventh delimitation which followed the Commissioners dealt with Provincial quotas which had doubled in number.

The following table shows the number of registered voters in the four provinces at the appointment of the first and tenth Commissions.

	1910	1953
Cape	142,367	601,131
Natal	27,753	157,149
Transvaal	97,743	693,108
Orange Free State	36,235	136,612

Over this period, there was a proportionate increase in the number of voters in the Cape and the Free State on the one hand and in the Transvaal and Natal on the other.

The natural increase in population and the fixing of a maximum membership for the House of Assembly has resulted in the increase in the provincial quota figures, as the preceding remarks reveal. In both 1910 and 1953, the Cape quota was the highest. The anomaly of a considerably higher Cape quota would be removed by putting the Coloured voters on a separate roll. This disparity had repercussions in the application of Section 40(3), in that the more extensive Cape rural districts required 1,000 more voters than rural divisions in the other three provinces. The provisions of the Act relating to the determination of the Union and Provincial quotas clearly did

(1) Section 3, "Women's Enfranchisement Act, 1930" (Act No. 18 of 1930)
 (2) Section 2, "Electoral Quota Act, 1937" (Act No. 21 of 1937)

not envisage the elimination of the provincial boundaries, which might have given a more equitable result generally.

In considering the allocation of seats and the determination of the provincial quotas since Union, certain population⁽¹⁾ trends came to light. From the holding of the Third Commission in 1919, there is already evident the tendency which is to mark future delimitations, of the influx of voters into the same urban settlements which represent so small a portion of the actual territory of the country. Each commission was to be faced with the problem of deciding whether to spread the voters out or to grant an additional seat to such areas. The recent development of the Orange Free State Goldfields provided another magnet for population in sparsely populated areas. In 1932, it was shown that there had been a large increase in the numbers of voters registered in urban and quasi-urban divisions, while in the country divisions there had been a small increase or even a decrease. In the Transvaal, the urban and quasi-urban constituencies of the Witwatersrand area and Pretoria had increased their voting strength from 70,224 to 88,198 and the 29 rural seats had increased from 67,635 to 75,228. Figures showing the average increase for the town and country divisions clearly indicate this point.⁽²⁾ Four of the five new seats allotted to the Cape and the Transvaal in 1932 went to urban and quasi-urban divisions. Sacrifices in the country areas were made in Natal and the Orange Free State.

The Eighth Commission observed that there had been a substantial increase in the number of European adult Union National voters on the preceding Commission's figures. This increase was chiefly confined to the large urban areas, there having been no notable increase of voters in the rural areas, and in fact, in many cases, there had been decreases. Population trends in the Cape were such that in addition to the three seats which were

(1) The word "population" used in the meaning given to it by the first Delimitation Commission i.e. "electorate", when Reports referred to.

(2) Cape 609:199; Natal 596:302; Transvaal 691:261; Orange Free State 763:78

lost to the Transvaal which had to be taken from the rural divisions, a further rural seat had to be eliminated as the Cape Peninsula warranted an additional seat. There were approximately 3,000 surplus voters in both Port Elizabeth and East London which had to be given off, and in each case the boundaries of the urban electoral area were curtailed. In the Transvaal, the Rand required six new divisions and Pretoria one, so three rural seats had to be eliminated there. Natal acquired a new semi-urban constituency north and west of the city at the expense of another area and, in the Orange Free State, the boundaries of the two urban seats of Bloemfontein were curtailed.

The Ninth Commission commented on the substantial increases made in the Pretoria urban area and the Witwatersrand over 1942 figures, whereas the growth of voting strength in the rurals was less marked and, in some cases, even fell below the 1942 figures.

The Tenth Commission, too, commented on the fact that the increase in the number of voters in rural areas did not keep pace with the increase in the cities. They drew special attention to the complications arising because of the irregular increases as between the different areas. The increase in the number of voters in certain rural areas was much larger than in others and in the case of the cities, the new areas showed a large increase while in the older areas, the increase was only slight or there was no increase at all.⁽¹⁾ Their predecessors had revealed that, in the Transvaal, there had been a drop in voting strength in only six rural divisions. In eleven, a substantial increase was shown, while in the remaining eight, increases varied from 50 to 300.

It has naturally followed that the number of rural seats has decreased in accordance as there was an increase in the number of urban voters. By the time of the Fifth Commission, there were 18 urban or quasi-urban as against 40 rural divisions in the Cape, 26 urban and 29 rural divisions in the Transvaal

(1) Tenth Del. Com. report, para 34, p. 9.

and 6 urban and 11 rural seats in Natal. By 1953,⁽¹⁾ the balance was weighted more in favour of the urban population. In the Cape, there were 22 urban as against 32 rural seats. In the Transvaal, there were 43 urban and 28⁴ rural divisions and in Natal, 8 urban as against 7 rural seats, while in the predominantly rural Free State, there were only 2 purely urban seats⁽²⁾ and 11 rural divisions.

From 1926 to 1949, at which year development of the gold-fields was in progress with resultant influxes of population, the European population in the Free State had been more or less stationary; but as from 1st January, 1950, two new magisterial districts of Odendaalsrus and Bultfontein were created and a new town, Welkom, established near Odendaalsrus. The gold-mining development on the Rand had been largely responsible for the weight of population being moved from the Cape to the Transvaal. Under the 1911 census, 42.94 per cent. of the total population was in the Cape, but by 1946, this area contained only 35.5 per cent. of the total population, whereas Transvaal figures rose from 28.3 per cent. in 1911 to 37.51 per cent. in 1946. There has been very little change throughout in the Natal figures.

Some explanation of these trends has been offered by the Ninth Commission. Protagonists of heavy loading on the towns accepted the explanation that the voting strength of the rural areas had drifted to and been absorbed by the towns. The Nationalist Party, whose main support derives from the rural population, has observed that its supporters are drifting more and more into the urban areas and in regard to the Cape Colony, they claim that this trend has resulted in their winning seats nearer to the heart of the city than ever before. In framing their delimitation plans for the tenth delimitation, they anticipated further influxes of this nature and the probable effect on the

(1) Tenth Del. Com. report, paras 35 and 36, p. 9/10.

(2) Ibid, para 37, p. 10.

two elections to be fought on that plan. In support of this assertion, they contested seats which had hitherto been unopposed United Party seats. The Ninth Commission, however, held the explanation of these trends lay in the fact that a general increase in the number of registered voters throughout the Union has had the result of substantially increasing the Provincial quota for each affixed number of House of Assembly seats.⁽¹⁾ In 1947 this meant, in the case of the Transvaal, that an extra 813 registered voters were needed in each constituency to maintain the previous percentage of loading or unloading.

There were but few instances of exceptions to this general trend. In 1932, there had been a very abnormal increase in the rural constituency of Bechuanaland in the Cape, and a striking feature of the 1923 delimitation was the decrease in the number of registered voters in the great urban centres as compared with the 1919 delimitation. This circumstance was explained to some extent by the fact that though the population had increased in the Cape Peninsula, the Rand, Durban and Pretoria, there were less voters in each case, and the number of divisions in the Cape Peninsula was reduced from 10 to 9. In the country districts of the Transvaal and the Orange Free State, as in 1919 but to a lesser extent, the voters exceeded the qualified adult male population according to the census, so that faulty registration offset to a small extent the effects of the trend of population to the urban areas. Certain statutory changes provided a more limited and temporary upheaval to the population balance in so far as delimitation was concerned, and this was dealt with by the Seventh Commission.

The Representation of Natives Act which came into effect on 10th July, 1936 had a considerable effect upon the Cape Voters' lists. Section 7 of the Act involved the removal from the European Voters' lists of 10,599 Natives, who were no longer to

(1) Ninth Del. Com. Report, p. 12, para 38.

be taken into consideration in the determination of the Provincial quota and the consequent framing of divisions, in the Cape. The number of names of Natives removed from the lists varied as between 1,400 in the Tembuland division and 26 in Port Elizabeth Central. The principal operation of the Act was in the Transkeian and Border districts of the Eastern Province, and the most noticeable effects were in Tembuland, where voters dropped to an unloading of 47 per cent., and in Griqualand, where there resulted an unloading of 37.8 per cent. A view generally expressed to the Commission was that none of the purely Native areas should be combined with European areas, as this was in conflict with the community or diversity of interest clause, so Tembuland division was constituted comprising only Native areas. The delimitation of East Griqualand and Tembuland added to the removal of Native voters from the Ciskeian voters' lists profoundly affected the delimitation of the Ciskeian constituencies, and Cathcart division had to be sacrificed. The Cape Peninsula area also lost one seat. It was anticipated that the Coloured voters might be removed from the common voters' roll before the 10th Delimitation Commission was appointed and the two leading political parties each drew up two plans, one incorporating these voters and the other excluding them. It was, however, the former plan which was used, so that the considerable changes which the latter would have involved, comparable to those when the basis of Native representation was changed, were not required.

The second statutory change involved the enfranchisement of women. It was provided ⁽¹⁾ that the Commission should base its calculations on the total number of European adult Union Nationals, both males and females. In certain Cape electoral divisions where there were large numbers of non-European males on the voters' list, the effect of the amendment was greater than elsewhere, because there was no increase in the number of Coloured voters to

(1) Section (2), Act No. 21 of 1937.

correspond with the increase due to the inclusion of white females. The relative increase in the total number of voters where there was a Coloured electorate was therefore considerably less than in divisions consisting exclusively of European voters, as a comparison between Cape Town (Castle) and Sea Point reveals. In 1937, the former stood below the minimum limit, whereas the latter had 9,136⁽¹⁾ voters. These conflicting circumstances increased the already great difficulties of the Commissioners' task of giving effect to statutory statistical requirements on the one hand, and yet having also to consider the five factors as set out under Section 40(3).

(1) Seventh Del. Com. report, paragraphs 1111 p. 6.

CHAPTER FIVE

THE JUDGES MAKE FULL USE OF THEIR
DISCRETIONARY POWERS

There would appear to be a natural division between the first and later stages of the Commissioners' work, into non-discretionary and discretionary functions. In the former stage which covers the allocation of seats and the establishment of the Provincial quotas, their findings are based solely on mathematical calculations. When these preliminaries have been effected, however, their work involves a considerable exercise of discretion. It is likely that there will be an increasing tendency to appoint the Commissions in the same month of every tenth year, and this may naturally result in the use of voters' lists up to a similar point in each biennial registration. Once this stage has been reached, the first part of the Commissioners' work will have become merely formal, as the political parties will in advance accurately establish the Union and Provincial quotas. The only issue that could arise thereon would derive from faulty registrations of voters, which is hardly relevant to the matter in hand. It is in the practical division of each province into electoral divisions that the Commissioners are allowed a certain amount of discretion in the interpretation of the clauses pertaining thereto.

Section 40(2)⁽¹⁾ provides that each province shall be divided into electoral divisions containing a number of voters as nearly as possible equal to the quota of the province, subject, however, to the provisions of sub-section (3). Under sub-section (3), five factors to which the Commissioners had to give consideration were listed. Although the quota of voters was to form the basis of the division, the Commissioners could depart therefrom to an extent of 15 per cent. more or 15 per cent. less than the quota,

(1) See Appendix 4

if this was found necessary in the application of these five factors, which were community or diversity of interests, means of communication, physical features, existing electoral boundaries, and sparsity and density of population.

The First Delimitation Commission allocated considerable space in their Report to an expression of what they considered the best method of applying the principles laid down in subsection (3). They acknowledged that clauses (a) to (d) corresponded substantially with the instructions given to the Transvaal Delimitation Commission in 1906. The benefit of the practical experience of the latter was likely to be felt owing to the appointment of Lawrence on both Commissions. There was, however, nothing in these instructions corresponding to clause (e) regarding "sparsity and density of population". No comparable clause was found in the Orange River Colony Constitution, nor was there any similar provision in the Australian Constitution from which many other features were borrowed. The clause itself was vague, as the framers of the Constitution had realised, but no agreement could be reached at the National Convention on a definition of the terms.⁽¹⁾ To them it appeared obvious, though it was not specifically laid down, that the intention was "in sparsely populated areas, that the Commission should endeavour to frame divisions containing a number of voters less than, and in densely populated districts a number exceeding, the quota".⁽²⁾

The framers of the Constitution had to consider a country of immense area with a small white population, that is to say that the total area of the country is 472,494 square miles and under the 1904 census, there was a European population of 1,116,806 made up of concentrations of people in the few cities and towns and the scattered population of the rural areas. The insistence of the Cape on some consideration being given to the territorial concept of representation can be understood in light of the facts

(1) See above, p. 52.

(2) First Del. Com. Report, p.11

that the Cape covered 58.65 per cent. of the total area of the Union and, while this principle was accepted, the smaller rural electorate could carry more weight than their numbers warranted. The inclusion of Clause (e) in the South Africa Act had been more in the nature of a sine qua non to the majority of the Cape Colony, who interpreted the clause in the same way as the First Commission.

There was some ambiguity about the word "population". In the Transvaal, the Orange River Colony and Natal, if taken roughly as equivalent to the European population, the proportion of electors to such population would probably have shown considerable variations, especially as between the large urban centres and the rural districts. At the Cape, this test would not apply, so the Commission considered the word must be regarded as practically tantamount to "electoral population" or electorate. Whether this test could be applied to the Transkeian Territories with their relatively dense population and sparse electorates was doubtful. These districts would appear to require exceptional treatment. It was found practically impossible to arrive at any precise definition of sparsity or density. Returns were obtained of the number of electors to the square mile in existing electoral, magisterial and fiscal divisions.

One suggestion made before Union was that for sparsely populated areas, so many hundred square miles should be the basis.⁽¹⁾ Difficulties arose where a considerable urban population was situated in the centre of a rural area. The Commission found, however, that on the whole there was no great difficulty in practice in deciding in which category each division, regarded as a unit, might fairly be ranked.

In considering "community or diversity of interest", the Commission found it impossible to lay down any comprehensive rule or principle. They contended that interest might be regarded as arising from the pursuits and occupations of electors,

(1) P. 16, O.R.C. Legislative Council Debates, 1909

whether pastoral or agricultural, mining or commercial, from their place of residence or way of life. In the practical application of this clause, the Commission discovered that cases where the local situation facilitated the creation of what might be described as homogeneous constituencies were exceptional. Where town and country had long formed one administrative unit, separation was often undesirable for in many instance, small urban centres in country areas were the nucleus for judicial, fiscal, ecclesiastical, educational and social purposes. At Cape Town, Durban, Johannesburg and Pretoria in particular, suggestions were made which might give due weight to the organisations of labour or, similarly, which would prevent a labour vote in one area submerging the interests of a residential suburb. Such suggestions usually proved inadmissible on statistical or on topographical grounds.

A deputation representing one of the political parties of the Orange River Colony put the suggestion before the Commission that, in accordance with the provision for consideration to be given to community or diversity of interest, the system of grouping towns together, as had been done latterly in that colony, should be extended so as to form one division out of eight towns situated in different parts of the colony and separated by considerable distances. Otherwise the areas concerned would never succeed in returning a representative to the Union House of Assembly. The Commission appreciated their grievance, but the fault was due to the system of single-member constituencies and, in the absence of proportional representation, the Commission could suggest no remedy. The Commission felt that single-member divisions probably facilitated the work of successive commissions, but the original scheme of proportional representation would have led to a more equitable distribution of seats.⁽¹⁾

The Bloemfontein area, however, was delimited so that one

(1) P. 303, Lawrence L of M.

seat was won by the Unionists and one by the Nationalists⁽¹⁾ at the ensuing elections.

Information had been correlated and carefully considered regarding means of communication and physical features. The Commission made every effort to avoid the linking of areas between which communications were difficult owing to bad roads, mountain ranges or unbridged rivers.

The remaining clause of sub-section (3) called for consideration to be given to existing electoral boundaries. The Commission stated that they paid particular regard to these boundaries, but not entirely at the expense of other local units, since they tried to retain and utilise boundaries of magisterial districts, field-cornetcies, polling areas as these presumably were based upon the convenience of the voters, and municipal wards. The strongest representations were made in connection with magisterial and fiscal divisions being maintained intact.

Existing electoral boundaries and magisterial districts were adhered to wherever possible in the Transvaal. It had not proved practicable in most cases to make use of the old wards or field-cornetcies, because of their size, but practically all the polling districts had been preserved intact. A similar course was adopted wherever possible with the polling areas of the Orange River Colony and the electoral wards of Natal. The Commission's task was made difficult in Natal because of the extensive areas for Native locations interspersed between the areas of European settlement. In the Cape, the Commission had endeavoured to preserve existing electoral and fiscal boundaries and twenty-two field-cornetcies previously split up, were consolidated.

No provision is found in the Constitution that this clause should become operative after the first delimitation, whereas it might have been expected that since there was no uniformity

(1) Bloemfontein - Unionists unopposed; Bloemfontein District - Nationalists

of practice throughout the four colonies prior to 1910, existing electoral boundaries would scarcely have conformed with the statutory requirements of the South Africa Act, and that it would have been outside the competence of the Commissioners to retain them.

Often in considering clauses (a) to (e), the Commission constituted divisions containing a number of voters more closely approximating to the quota than would otherwise have seemed advisable. In other cases, where the population was less sparse, divisions were created more closely approximating to the minimum than justifiable. This would suggest that the first Commission gave effect to the five clauses in such a way that the full 15 per cent. allowance was not used to its full extent. The Commission stated that they had endeavoured to exercise their discretion in the application of the general principles laid down by the Act in such a manner as seemed best calculated to secure a satisfactory scheme of representation of the various districts in the Union Parliament. In some instances, more weight was given to one of the five points than another.

In tracing the interpretation given by each successive Commission to clauses (a) to (e) respectively of Section 40(3), it will be seen to what extent this first interpretation was adhered to and when new contributions in the application of the Act were made. There was very little discussion of principle by the Second Commission, possibly because of the continuity of personnel and the short space of time since the holding of the previous commission. They did make the remark that they had waived statistical considerations in certain instances in the Orange Free State in favour of community or diversity of interest, however. The Third Commission complained that under the existing system of twenty-five Provincial divisions and seventeen House of Assembly divisions in Natal and the Orange Free State, the same degree of community of interest could not be developed in these provinces, as was being witnessed in the Cape and the Transvaal. The Fourth Commission tried not to

split compact areas or sections where common interests existed, and in the delimitation of the Cape, the Commissioners showed themselves willing to concede to local requests on these grounds.⁽¹⁾ In the course of their duties, the Commissioners decided that the provisions regarding density and sparsity of population was not the dominating factor of section 40(3), but that community of interest and facility of communications were just as important. All five considerations had to be weighed, though of necessity a choice had to be made of the most suitable one or ones.

The Fifth Commission tried to consider community or diversity of interest, but often found itself forced to combine communities with divergent interests. It was often difficult to keep the constituencies homogeneous in the character of their voters and at the same time compact geographically. The opportunity was taken to return to the country the rural districts of Springs and, in the West Rand, there was the surrender to the country of roughly 400 voters from the rural portions of Roodepoort. The Sixth Commission were considerably influenced by this factor in their delimitation of the Transvaal in particular. There are examples as of Roodepoort, of exclusively mining constituencies and the Commission managed to embrace within one compact constituency of Rustenburg, a collection of voters engaged in the same sort of farming.

The Seventh Commission laid great emphasis upon the importance of the magisterial boundaries. There was legislative provision⁽²⁾ for the alteration of these districts and the creation of new ones. In forming new districts, community or diversity of interest, means of communication and physical features were the basic considerations. Because of this, a magisterial boundary often conveyed to the Commission useful information on three of the five points of Section 40(3). The Commission gave a clear expression of the procedure they adopted in cases where there were

(1) Their plan for reducing Victoria West by deducting a polling district containing Loxton, to which the people of Loxton were hostile, was dropped.

(2) Section 2, Magistrates' Courts Act, 1917 (Act No. 32 of 1917)

mixed urban and rural communities.

Two practices had been followed in the past. With East London and Pietermaritzburg, one purely urban division had been created and the remaining urban voters had gone to form portion of a mixed urban and rural division. With Bloemfontein and Kimberley, the system was adopted of dividing the whole of the urban area in such a way as to constitute two seats, each of which was partly urban and partly rural. The Commission decided that the former system was preferable since it made for better representation of the people concerned. So in the case of Bloemfontein, East London and Pietermaritzburg they delimited one purely urban division and one division constituted of the surplus of urban voters and a sufficient number of voters in the adjoining rural areas. The Commission also created one purely urban constituency of Kimberley City and one almost entirely rural division called Kimberley District, though this caused great resentment. Under this method, the party which drew its backing from the urban population was assured of a seat within a predominantly rural area, which, outside Natal, supported in the main the alternative party.

The Eighth Commission announced that they were mainly influenced by four of the factors, excluding the retention of existing electoral boundaries, and community or diversity of interest they set third on their list of influencing factors. The degree of community of interest in existing divisions was carefully considered by this Commission when selecting a rural division for elimination. When a rural seat had to go, the first step was to find a group of constituencies where the voters warranted one less seat. Within this area, the division within which there was little community of interest and which was deficient in voting strength was deleted, particularly where the interests of the various portions could find community with adjoining areas. Although two of the members of this Commission sat on the succeeding Commission also, the latter body gave weight to different points of Section 40(3), and asserted that their delimitation was based firstly on community of interest.⁽¹⁾ A major difficulty was experienced. The need to

(1) On following page

obtain voting strength of adjoining constituencies often hampered attempts to give recognition to community of interest in the form of observance of the magisterial unit and existing electoral boundaries. The Tenth Commission commented at length on their interpretation of the contentious Section 40(3). They asserted that in loading and unloading, they took into consideration clauses (a) to (e), but limited themselves to the extent of trying not to split magisterial districts in the country, as the voters in such districts generally have common interests. Boksburg, Pretoria East, Natal South Coast, Gordonia and Vryburg⁽¹⁾ were formed mainly on the grounds of community of interest. The Commission found an extensive overall modification of boundaries necessary, but always aimed at community of interest.

Clauses (b) and (c)⁽²⁾ of Section 40(3) can appropriately be dealt with together. The Second Commission referred to the problem that had arisen over the delimitation of Barberton on the grounds of means of communication. The Unionist Political Association suggested radical changes on the grounds that the magisterial district of Barberton was linked to that of Carolina though the two districts were separated by a mountain. The previous Commission had recognised the defect of their delimitation regarding Barberton but felt that topographical objections were outweighed by statistical considerations. Since then, railway communications had been improved and considerable money had been expended in repairing the road from Barberton across the mountains to Carolina, so that the second Commission felt these objections had been largely overruled.⁽³⁾ The Third

(1) from previous page: This was interpreted in the sense of retaining magisterial districts as entities because of administrative matters in regard to roads, schools and the conduct of elections to give a few examples. Private individuals and representatives of the political parties stressed this point to the Commission.

(1) All seats were retained in the 1953 General Election by the same parties as in the previous election, and only in Vryburg had there been a change of party over the last four elections.

(2) See Appendix 4 (3) Second Del. Com. Report, p. 24

Commission preferred to use the farm lines and mining properties as boundaries, but irregular outlines often resulted, and they considered that, in the towns, streets and railway lines were demarcations most easily grasped by voters. An inequality in the number of voters in similar-type constituencies resulted from the practice of maintaining divisions with community of interest, facilities for communication or a clear demarcation of boundaries by geographical or topographical features.

The Fourth Commission made no specific reference to means of communication, and a possible reason for this clause receiving comparatively little attention is suggested by the Fifth Commission. They complained of lack of information regarding means of communication and physical features. Very little information was forthcoming from the electoral maps, the Transvaal country district maps only showing boundaries of electoral divisions, magisterial districts and polling districts. They made the suggestion that it would be a great help to future Commissions if the provincial maps showed roads, railway lines, rivers, bridges, mountains, mountain passes, towns and villages. The Sixth Commission gave consideration to this clause where its importance seemed to be the more compelling. The Seventh Commission reiterated the dire need for adequate maps to show the principal mountain ranges and rivers. They gave most weight to sparsity and density of population and means of communication. The latter factor, combined with that of physical features, was of major importance in examining magisterial boundaries, which the Commission tried to keep intact. Of the four factors influencing the Eighth Commission, physical features came first and means of communication was set at the bottom of their list. The Ninth Commission asserted that the weight given to the different factors would necessarily vary. For instance, they felt that less importance should be attached to means of communication because of the improvement in rural communications since 1910.⁽¹⁾ The relative degree of importance to be attached

(1) Ninth Del. Com. Report, para. 19

to physical features was considered debatable. It would appear that this Commission largely discounted the factors which suggested a territorial basis of representation.

The Tenth Commission felt that all five factors of Section 40(3) should be considered. They felt they could not agree with the view expressed by their predecessors that less importance should be attached to means of communication, since as a result of improved transport facilities, means of communication no longer had the same importance as in 1910.⁽¹⁾ In some cases, the degree of loading and unloading was influenced by means of communication and physical features. Where it was found necessary to modify boundaries, special attention was paid to these two factors.

In tracing the interpretation of Clause (d) concerning "existing electoral boundaries", it is found that the Second Commission attached considerable importance to this point. In the absence of altered conditions or well-grounded objections to the existing arrangements, the Commission felt that the Constitution should be so interpreted that divisions could be left as they stood. Because of the brief interval which had elapsed since the previous Commission and the desirability for leaving undisturbed groups which had been associated for political purposes, they signified their anxiety to preserve "existing electoral boundaries", and this in spite of any increase or diminution of population. Local opinion was behind them in this, for people did not want to be called upon already to adjust themselves to new boundary lines. This decision led them to suggest an amendment to the Constitution which they felt might simplify the task of future Commissions and obviate the necessity for future minor changes. Their suggestion was that a 20 per cent. departure from quota should be granted. They felt that natural population trends would keep within the 20

(1) Tenth Del. Com. Report, para. 23, p. 71. The Commission also considered the factors

per cent. limit for a considerable space of time, whereas 15 per cent. had proved to be slightly too low and changes in a few years had exceeded the maximum and minimum limits, where divisions had been quite heavily loaded or unloaded. The Commission then criticised the statutory provisions which they felt might render the retention of existing boundaries impossible, namely those concerning the holding of quinquennial parliaments and censuses. As the first Parliament was elected in 1910 and the first census was held in 1911, whenever Parliament lived its normal life, each Delimitation would have to be effected some three years previous to its dissolution.⁽¹⁾ Intermediate registrations might entail considerable variation from the figures the Delimitation Commission used. Under these circumstances, to leave existing boundaries of some divisions near the minimum or maximum might mean that, before the next election, these limits might be infringed. Difficulties were encountered in the Cape on account of the frequent changes in boundaries, other than electoral, namely fiscal divisions and field-cornetcies. This meant that the boundaries of the units from which the divisions were built up were being changed constantly. Changes were made between the registration of 1911 and the delimitation of 1912. If the Commission had ignored this inopportune administrative action, the problem would have awaited their successors, but they drew attention to the immense waste of time on problems of this nature which were not essentially their responsibility. The Commission sought to adhere to its predecessor's policy of not splitting field-cornetcies and fiscal divisions, and they tried to consolidate both fiscal divisions and field-cornetcies which had previously, under Cape Colony rule, been parcelled between different constituencies.

(1) See p. 90 regarding reasons for no longer having delimitation tied up with the census

The Third Delimitation Commission experienced greater difficulties in retaining existing boundaries than its predecessors, as alterations had to be made to the constituencies to provide new electoral divisions for surplus voters and to equalise numbers between the various constituencies. The Commission tried wherever possible not to alter existing electoral divisions, but comparatively few could be left intact. As a rule, whole polling districts were transferred from one electoral division to another, but in a few instances it was found necessary to divide them. This necessitated a "blocking out" of such polling districts by the registering officers. The substitution of polling districts⁽¹⁾ for field-cornetries or Wards which were subject to frequent changes, in the various Union electoral divisions, simplified and accelerated the work of the Delimitation Commission as compared with its predecessors. The Commission tried to make new electoral division boundaries coterminous with existing fiscal or magisterial districts, which course found favour with magistrates and other officials. The Fourth Commission tried to comply with the wishes of the Cape that fiscal divisions be maintained intact and electoral and magisterial boundaries should be made to coincide.

The Fifth Commission asserted that it kept in mind the provision of the South Africa Act requiring it to "give due consideration to existing electoral boundaries", but several causes necessitated greater changes than any previous Commission had made. The creation of additional constituencies in three of the provinces was given as the primary cause. Secondly, in the Cape and Natal, there had been considerable movement of voters due to the legal provision that voters were to be registered in the electoral division in which they resided⁽²⁾ whereas previously, they were

(1) Under Section 41(1) of Act No. 12 of 1918, an electoral division could be subdivided into as many polling districts as thought necessary. The number of polling districts could be increased or decreased and the boundaries altered.

(2) Section 4, "The Electoral Act, 1918, Amendment Act, 1926" (Act No. 11 of 1926)

registered where they worked. The result was that constituencies like Cape Town (Central) and East London (City) were deprived of the bulk of their voters. The Commission tried not to cut fiscal, magisterial and polling districts by electoral boundaries, but often had to. The changes in the allotment of seats alone would have involved the Sixth Commission in considerable interference with electoral boundary lines. Added to this, however, was the factor that there had been a large increase in the number of voters registered in urban and quasi-urban districts, while in the country divisions there had been a small increase or even a decrease.⁽¹⁾ Because of this migration of voters, the Commission felt compelled to create a constituency wherever there existed any number of voters equivalent to the provincial quota.

The Seventh Commission felt that the Act intended them to make as little disturbance to the existing state of affairs as possible, which is comparable with the interpretation given by the First Commission. While having regard for existing electoral boundaries, the Commission also kept in view the desirability of making the boundaries of magisterial districts and electoral divisions coincident and tried to avoid splitting a magisterial district. With Witbank, Bethal, Middelburg, Lydenburg, Carolina and Ermelo divisions, considerable adjustments were made to provide a greater coincidence between magisterial and electoral boundaries. The Commission gave their interpretation on the interesting twist that since the magisterial districts into which the Union was divided were formed on the basis of three of the five points listed under Section 40(3), their boundary lines were to be retained sometimes in preference to electoral boundary lines. The retention of magisterial boundary lines facilitated the administrative work relating to the registration of voters and the conduct of elections. The Commission complained of the inadequacy of the maps from which they worked. They emphasised the need for

(1) See footnote 2, p. 98 for comparative town/country increases

maps showing existing electoral divisions, boundaries of the magisterial divisions and, in the Cape, any variation therefrom in the boundaries of the Divisional Council areas, and existing polling districts. In urban areas, they asked that blocks should be indicated and in rural areas, the names and boundaries of farms, to enable the Commission to obtain statistics of the numbers of voters where necessary to divide a polling district. In some maps, particularly those of Natal, while the magisterial boundaries were shown, the method of marking made it difficult to trace them, and, in the Cape, no Divisional Council boundaries appeared. The Eighth Commission adhered where possible to existing electoral boundaries and endeavoured to make them coincident with magisterial divisions. Where there were divergencies between the two, these were the more marked by reason of the fact that the Seventh Commission had successfully devoted much effort towards making magisterial and electoral boundaries concur. On occasion, the Commission found it desirable to maintain an electoral boundary which resulted in a loading or unloading slightly at variance with what the Commission would otherwise have fixed.

The Ninth Commission felt bound to attach more importance to existing boundaries than certain of the other factors. They stressed the undesirability of frequent changes in electoral boundaries, and took into account local sentiment, which favoured the retention of old-established and historical constituencies. The Commission admitted that this interpretation differed from that of its predecessors, even though two of its members had sat on the previous Commission. Community of interest was to them the dominant factor, but after this, primary importance was attached to existing electoral boundaries, particularly where these were long-standing. Difficulties arose because of the process of addition and subtraction of areas which had been continuous since 1913. In many cases, the results had been that a town on which an electoral division was based, and from which its name had been

derived, might be situated at the edge of a division, and it required much manipulation to keep an old-established electoral division intact. In several instances, the Commission were compelled to eliminate and amalgamate. They were guided in this by an expression of principles made by their predecessors in 1943.⁽¹⁾ Historical sentiment alone could not form the basis of their actions.

The Commission contended that there was no justification for eliminating a seat in a relatively well-populated area merely to maintain the existing number of seats in a large but scantily populated section of the province. The Tenth Commission found that in the overall plan, an extensive modification of boundaries was necessary, though, in theory, they felt that as much weight should be given to this factor as to the other four. They pointed out instances where the degree of loading⁽²⁾ or unloading⁽³⁾ was at variance with other figures because it was desired to retain certain boundaries which appeared to satisfy the requirements of the South Africa Act.

The First Commission were called upon to make an original contribution in their definition of Clause (e), regarding sparsity and density of population, and comparatively little comment was forthcoming on this clause by succeeding commissions. After discussion, the Fourth Commission found that this clause was not the dominant factor under the sub-section. The Fifth Commission affirmed that they had given due regard to the clause and on the grounds thereof, felt bound to impose percentages which were considerably above the quota on thickly-populated areas like the Rand, the Cape Peninsula, Durban, Pretoria and Port Elizabeth and correspondingly low percentages were imposed on rural areas with sparse populations such as the North-Western Cape, Northern Transvaal and Northern Natal. The Commission's determination in this connection was only contested regarding the Rand, where

(1) pp. 6-7, para. 24, Eighth Del. Com. Report

(2) A higher load was justified for "Transkeian Territories" - a United Party seat by a 4,311 majority in 1953

(3) "Potchefstroom" was unloaded less than any of the other Transvaal rural divisions - a Nationalist seat by an 882 majority in 1953

it was claimed that the average percentage for seats in the Rand area should be low enough to allow for 22 seats being allotted among the 57,777 voters registered there. This claim the Commissioners felt unable to entertain. Under the Sixth Commission, the fullest consideration was given to sparsity and density of population. The urban and quasi-urban constituencies were allotted voters considerably in excess of the prescribed quota, and the figures were made correspondingly low in the rural districts.

In establishing divisional quotas, the Seventh Commission gave most weight to sparsity and density of population and means of communication, but it was mainly preoccupied with the community of interest principle. The Eighth Commission considered this factor as second in importance of the five clauses. The interpretation the Ninth Commission gave to Section 40(3) indicated that they felt that the clauses designed to favour the rural population were no longer well-founded, and this led them to state that Clause (e) should carry less weight than the provisions regarding community of interest and existing electoral boundaries.

The Tenth Commission gave their interpretation of this clause when setting down their findings with regard to the representations made by the "War Veterans' Torch Commando".⁽¹⁾ The latter argued that Section 40(3) had been erroneously interpreted in the past, and that sparsity and density of population had been made the only reason for loading and unloading by previous commissions, which meant that all urban seats were necessarily loaded and rural seats unloaded. The Commission, however, felt that this was not the case, and in turn accused the Torch Commando of basing their criticism on a comparison of only the sparsity and density of population. The Tenth Commission clearly stated their intention to give equal emphasis

(1) Tenth Del. Com. Report, p. 7

to each of the five factors under Section 40(3). This represented a strict interpretation of the Act, more in the light of conditions as they existed in 1910, whereas the tendency had been apparent to exercise greater discretion in adapting the Act to changed conditions.

The representative of the "War Veterans' Torch Commando" made the further provocative statement that past commissions had lost sight of the fact that their discretion to load or unload seats should only be exercised in order to satisfy the requirements of one or more of the factors mentioned in Section 40(3). The assumption was that the degree of loading of urban seats and unloading of rural seats was too high and that there were hardly any seats which have not been either loaded or unloaded. The First Commission began the practice, which was followed throughout, of setting out the minimum and maximum limits when the respective provincial quotas had been established. The Commissioners indicate in their Reports the number of registered voters in each constituency, and it is at once apparent from the scale whether a seat conforms with the statistical requirements. The First Commission stated that in constituting divisions to give consideration to clauses (a) to (e), the number of voters therein more closely approximated to the quota than would otherwise have seemed advisable owing to the extreme sparsity of population. In other cases, where the population was less sparse, divisions were created more closely approximating to the minimum than was justifiable. Though it would seem that they held that, ideally, the degree of loading or unloading was dependent upon the density or sparsity of the population, they were prepared to depart from this if other factors seemed more compelling. Already in practice, the idea of a graduated scale of departure from quota is coming into use. ⁽¹⁾

The Second Commission was in agreement with the interpre-

(1) See p. 44

tation of its predecessors, and referred to the precedent established by the Australian Commissions of constituting divisions with a larger electorate in urban than in rural areas. Having had the experience of two Commissions, its members felt they were in a position to make certain suggestions which would assist future commissions if acted upon. Their most significant suggestion was that the percentage departure from quota should be increased from 15 to 20, on the grounds that boundary changes would be needed less frequently with a 20 per cent. allowance. The Commission felt that the provisions of the South Africa Act on this subject had been based on the Commonwealth Electoral Act which provided for a 20 per cent. departure from quota.⁽¹⁾ The allowance stood at an even higher figure in New Zealand. There the country quota first appeared in 1881, to the equivalent of an addition of $33\frac{1}{3}$ per cent. to the country population. It was reduced in 1887 to 18 per cent. but increased two years later to 28 per cent., at which figure it stood until 1945. The legislature, however, did not act upon this suggestion and, unlike New Zealand, South Africa has made no changes in the percentage allowed, this being the only occasion on which a Commission made the suggestion.

A definite form of procedure soon came to be adopted in regard to the application of the loading device. The reports reveal that the commissioners first ascertained the urban areas in a province and then proceeded to allocate thereto a proper proportion of members on the general basis of higher quotas for compact constituencies, in such densely populated areas as the Cape Peninsula, Durban and the Rand. Thereupon it could be determined how great the average unload could be. Suggestions made to the Fourth Commission by interested parties revealed the two divergent views with which the loading provisions were regarded. One group felt that all urban areas including

(1) See "Commonwealth Electoral Act 1918-1934", Section 19

the Rand, which on some occasions was given more favourable treatment, should be heavily loaded to give effect to the principle underlying the Act of Union that representation was in respect of area as well as voters to provide protection for the agricultural population as the backbone of the country. Another group argued that equality of voters in electoral areas should be the rule and disproportion the exception. The Fourth Commission held the view that sparsity and density of population was not the dominant factor in determining the degree of loading or unloading, which struck a middle course between the two opinions given. The Fifth Commission was more emphatic in its support of the argument put forward by the first group mentioned above. At the outset the Commissioners affirmed that due regard would be given to sparsity and density of population and on these grounds, imposed on thickly populated areas like the Rand, the Cape Peninsula, Durban, Pretoria and Port Elizabeth, percentages which were high above the quota and correspondingly low percentages were imposed on rural areas with sparse populations such as the North-Western Cape, the Northern Transvaal and Northern Natal. For example, Port Elizabeth was given a load of 12.62 per cent. and the north-western divisions an average unload of 12.09 per cent. Likewise under the Sixth Commission, the urban and quasi-urban constituencies were allotted voters considerably in excess of the prescribed quota and the figures were made correspondingly low in the rural districts.

The Eighth Commission acknowledged that it was aware that the difference in the degree of unloading in the Transvaal and in the Cape was criticised, but the obvious explanation of this was that, in the former province, there was a preponderance of urban over rural divisions, a ratio of 39 to 25 as against 20 urban divisions to 36 rural divisions in the Cape. In every province, the aggregate load had to balance the aggregate unload.

The Ninth Commission felt that in fulfilling its primary

duty of dividing each province into the required number of electoral divisions, the thorny problem was the extent to which discretionary power should be exercised by it, more particularly as between the town and country constituencies. The Commissioners announced that they were unable to subscribe to the general principle suggested to them that rural seats were "as of right" entitled to a substantial unload, even to the maximum, at the expense of a correspondingly heavy load upon urban seats. They saw as the basic object the approximation as near as possible to the quota, and the grant of an unload or the imposition of a load was not a right, but was intended as a means entrusted to the Commissioners' discretion of giving effect to one, more or all of the clauses under Section 40(3) and the weight given to the different factors would necessarily vary. ⁽¹⁾

To substantiate this view, they remarked that discretionary loading and unloading had at no time existed in Canada, and loading had been abolished in New Zealand in 1945. ⁽²⁾ In Australia, the practice still prevailed to a maximum of 40 per cent., that is 20 per cent. above and 20 per cent. below. ⁽³⁾ The Commissioners felt that they could not accept as a general principle the degree of loading and unloading previously adopted.

The Commission discussed in detail its decisions with regard to loading and unloading in each province. In the Cape, the 14 Peninsula seats were given an average load of 8.2 per cent. and certain rural constituencies were given small loads. In the Transvaal, the Ninth Commission felt that the Transvaal should be regarded as a single entity and not as three isolated unconnected areas, as under past practice, when the province had been treated as consisting of the Witwatersrand area, the Pretoria urban area and the rural area. There was no statutory authority

(1) Ninth Del. Com. Report, p. 7

(2) The Electoral Amendment Act, 1950 (N.Z.) introduced an allowance for the adjustment of the quota at a figure not exceeding 7.5 per cent. of the quota.

(3) Under section 19 of the Commonwealth Electoral Act of 1918, as amended

for such a division. It was merely a matter of convenience. There were no longer any grounds for separating the provinces into urban and rural areas and determining the load of the urban seats at the outset if the provisions regarding loading were given the above interpretation.

The Tenth Commission announced that erroneous approaches were made to it in connection with the 15 per cent. allowance. It was suggested that urbans should be loaded and rurals unloaded on the basis followed by previous commissions. The Commissioners pointed out that the South Africa Act refers to sparsity and density of population and not country and town, though the two are usually synonymous in practice. There had been exceptions in the treatment by the commissions in such cases as Paarl, Queenstown, Stellenbosch, Bethlehem, Kroonstad, Vredefort and Winburg, which, though still regarded as rural seats, had since 1910 been loaded more often than not. This erroneous belief was probably due to the fact that inaccurate references had been made in the past to the unloading of rurals and the loading of urbans, and the general belief that a seat was unloaded because it was sparsely populated and loaded because it was densely populated; but Section 40(3) lists five factors applicable to loading and unloading. At the beginning of the proceedings, the Commission were asked in the Transvaal to determine and announce in advance the percentage of loading and unloading it intended to apply, but the Commission asserted that each seat would be dealt with on its merits in the complex of seats as a whole.

The Commission explained the great difference between the loading and unloading as between the various provinces. This was because each province is delimited as a separate unit and the total loading in a province must equal the total unloading. Where there were an equal number of densely and sparsely populated electoral divisions - the Commission pointedly avoided using the terms rural and urban divisions - the task was easy.

Difficulties arose where the two types were not so evenly balanced. In the Cape, the rural divisions are more extensive in area and more sparsely populated. On the one hand, there are desert-like areas and on the other hand, there are very mountainous regions, but divisions therein are unloaded to a lesser degree than in the Transvaal. Densely populated areas are less in number than in the Transvaal, but they are nevertheless more heavily loaded. In the Cape, certain areas are considered densely populated which would not be so regarded in Natal, the Orange Free State and the Transvaal due to the extensive area of the Cape. Namaqualand division alone was almost the size of Natal. Namaqualand and Prieska, which carried unloads of 14.1 per cent. and 11.6 per cent. respectively, were together the approximate size of the Orange Free State. Coupled with the Commission's statement that all clauses of Section 40(3) were equally weighed in determining the load or unload - as against the comments of its predecessors regarding means of communication and physical features - this emphasis on the area of the various constituencies suggests an interpretation founded on principles generally upheld at the time of Union.

Both the Tenth and Fourth Commissions made special reference to the area of the four provinces in a discussion of the loading device. The fact that at the Fourth Delimitation Commission each Cape country constituency averaged 7,834 square miles, as against 4,540 square miles for the Transvaal, 3,912 for Natal and 3,182 for the Orange Free State, coupled with the fact that the electoral area of the Rand was more than 3.5 times that of the Cape Peninsula while the Cape Province is more than 2.5 times the size of the Transvaal, were reasons why the Cape urban electoral divisions were given a higher load than in the other provinces. It is interesting that two judges from the Cape Province sat on both Commissions ⁽¹⁾ and that both ensuing elections were won by the party with rural backing,

(1) In both instances, one from the Cape and one from the Griqualand West divisions

which would suggest the general prevalence at that time of the political ideas forming the premises for these interpretations.

The Tenth Commission made it quite clear that it considered the framers of the Act had intended equal weight to be given to each of the five clauses in determining the degree of loading and unloading. Developments which have taken place since 1910, however, have changed the conditions to which it was thought necessary then to give consideration. The Ninth Commission had made particular reference in this connection to means of communication, and a digression to consider changes therein may to some extent substantiate the latter's argument.

In the four decades which have followed the drafting of the South Africa Act, significant improvements have been effected in transport and communication facilities, and these developments have considerable importance in view of their bearing on the interpretation to be given to "means of communication", ⁽¹⁾ one of the factors on which the Commissioners were to exercise discretionary powers. The point at issue in this connection is whether the framers of the Constitution were justified in including this clause in 1910 and whether there is still any justification for its retention.

In 1910, it can fairly be stated that all travel was conducted by horse and cart, and means of communication outside the urban areas were poor. ⁽²⁾ Two sets of statistics are available for this period regarding the mileage of streets and roads and the number of bridges. On the one hand, they concern roads and bridges under Municipality and Village Management Board control, and on the other, all roads and bridges excluding these. Regarding the former, in the 1912 financial year, there were 502 miles of road and 25 bridges in Natal and 1,728 miles of road and 100 bridges in the Transvaal. ⁽³⁾ In the latter case, road mileage in the four provinces as at 31st December, 1912

(1) Clause 40(3)(b)

(2) See comments of First Commission, p. 108 above

(3) Figures for the Cape and the O.F.S. are N/A

amounted to 40,937 miles on which there were 425 bridges in all, and there had been a total expenditure thereon of £554,392.

The most important step in road development has been the building of national roads. The National Roads Act was passed in 1935, and by this Act a National Road Fund was created which is administered by the National Transport Commission. The Commission recommends to the Governor-General for declaration in the Gazette any road which, in the national interest, it considers should be declared a national or provincial road or a special road, and generally to promote the improvement of road services in the Union. All the work done will be permanent and will provide as far as possible for safe, rapid, economical and all-weather transport. Approximate progress on national roads up to 31st December, 1949 includes 2,328 miles of road of Bituminous surfacing and 3,672 miles of other than Bituminous surfacing, upon which 620 bridges have been completed or are in the process of completion. ⁽¹⁾ The total road mileage in the Union in the financial year 1948-49 was 89,327 miles, made up of 39,444 miles in the Cape, 6,609 in Natal, 28,656 in the Transvaal and 14,168 in the Orange Free State. The number of bridges as at 1946-47, which is the latest date at which figures are available, in the Cape, Natal and the Orange Free State was 903, 556 and 691 respectively, giving a grand total of 2,150. ⁽²⁾ The total expenditure on roads and bridges in the Union for the financial year 1948-49 was £8,836,059. The result of expenditure of this kind has been the phenomenal improvement in means of communication and for example, in the Orange Free State, where there are approximately 5,300 miles of main roads including national roads and approximately 6,700 miles of district roads, which are well

(1) All statistics in connection herewith were drawn from the South African Yearbooks and unless otherwise stated, from that issued in 1949.

(2) Recent figures for the Transvaal N/A, but by 1937-38, 307 bridges had been built and in the 1949-50 financial year, £35,000 was spent on bridges.

bridged and drained, it is possible to travel over the greater portion of the province without danger from flooded rivers and spruits. "A big constituency with good roads was easier managed than a small constituency with bad roads."⁽¹⁾

Side by side with road development has been the growth of motor transport. Some of the earliest figures available after Union of the number of motor vehicles then licensed reveal a total of 16,267 vehicles licensed in 1918-19.⁽²⁾ The number of vehicles licensed in 1949 in the Union totalled 611,655 made up of 454,684 cars, 133,185 buses and commercial vehicles and 23,786 motor cycles. The larger towns and cities have tramway and motor bus services, and the number of buses in use during the 1948-49 financial year totalled 1,025. The South African Railways and Harbours have a large number of road motor services in operation with a total route mileage of 22,197 as at 31st March, 1949. Rural motor services are operated mainly for the development of these areas. As at 31st March, 1949, there were 1,080 motor vehicles and 564 trailers in operation.

Although road transport had not developed by 1910, some advance had been made with the railways. The open mileage of Government and private railway lines as at 31st December, 1910, in the four provinces, totalled 7,586 miles, made up of 7,041 miles of Government lines and 545 miles of private lines. The open mileage of Government and private railway lines as at 31st March, 1952⁽³⁾ in the Union totalled 12,086, which represented an increase of 4,500 miles in just under forty years.

It is, however, the extensive use of air transport which has revolutionised communication and travel facilities. In 1931,⁽⁴⁾ powers were granted to the South African Railways Administration to operate its own departmental aircraft, for the transport of passengers and goods, and on 1st February, 1934, the

(1) p. 17, 1909 Legislative Council Debates, Orange River Colony

(2) 1910-18 Yearbook

(3) S.A.R. & H. Yearly Report as at 31st March, 1952

(4) "Railways and Harbours Regulation, Control and Management (Further Amendment) Act, 1931 (Act No. 21 of 1931)

Administration took the first steps to implement the provisions of the Act, and assumed control, as South African Airways (South African Railways), of the services previously operated by Union Airways between Durban and Cape Town and Durban and Johannesburg. On 1st April, 1936, South African Airways took over the whole of the services south of Germiston. In regard to civil aviation, the National Transport Commission was established on 2nd December, 1948, and inter alia, it took over the powers, functions and duties of the Civil Aviation Council. Its functions include to keep under review and promote the progress and development of civil aviation in the Union and to promote or assist in research into matters pertaining to civil aviation, and the licensing and control of air carriers and air services. Executive and administrative work vested in the Department of Transport involves the encouragement and development of flying and proposals for the establishment of goods, mail and passenger air services within the Union.

In 1934, 72 civil aircraft were registered compared with 598 in 1948. There are frequent internal services between the major towns. Between Johannesburg and Cape Town, there were seven services per week in both directions and twenty-eight services per week in both directions between Johannesburg and Durban by 1949. To date, there are 107⁽¹⁾ public airports and 53 private airports in the Union, including the two international airports Palmietfontein and Jan Smuts,⁽²⁾ and as at 31st March 1952 South African Airways' fleet had 26 aircraft covering a route mileage of 19,640.

This great advance in road, rail and air transport brought with it a new kind of life for people living in outlying rural

(1) Figures taken from Aeronautical Information Publication, 1952

(2) It is interesting to note that 68 of the total of 160 airports are in the Cape, which is the most extensive province in area.

areas. They need no longer feel out of touch with everyday affairs, and they have in fact made extensive use of the facilities for travel which have been afforded them. The telephone and radio are in general use and newspapers are available to all. There has been a very limited use of the radio for political purposes over the election period, so it is in the interests of the political parties to see that the whole electorate has the benefit of their newspaper campaigning.⁽¹⁾ Owing to the loading device in favour of the rural districts, the political parties see to it that this important section of the electorate is not ignored. The disabilities under which the rural population laboured were considered by the framers of the Constitution to be twofold. Firstly there was their inability to bring their needs before the notice of their parliamentary representatives, and their lack of opportunity for political development, because of their isolation. Secondly, there was the difficulty they would experience in casting their votes. The former consideration has largely been over-ruled by the communication improvements referred to above. When, in 1945, amendments were made to the New Zealand Constitution so that it was no longer weighted in favour of the country districts, this step was taken on the grounds that "The old reasons are gone. The pony and buggy days have gone altogether."⁽²⁾ Side by side with this development is the important factor that even prior to Union, the country districts had achieved a greater degree of political organisation than the towns, and it is the party system which connects the electorate with its representatives. At the present day, party has filled the breach where constituencies have become so large in area and numbers that a candidate cannot be known to all in person.

(1) The Nationalist paper "Die Kruithoring" and the United Party paper "Challenge" are issued weekly

(2) p. 43, Hansard (N.Z.)

With regard to the second argument, developments in New Zealand again suggest a comparison. With the abolition of the country quota and the total population basis for the allocation of seats, to obviate an accusation of discrimination in favour of the urban population, a more convenient method of postal voting was provided ⁽¹⁾ to ensure that it was possible for every voter to cast his vote. In South Africa, the postal vote has lately become increasingly popular and has been much more extensively used.

In 1926, ⁽²⁾ Parliament first legislated on postal voting, and provision was made for absent voters to cast their votes by post. The term "absent voter" was to apply to any person who was enrolled on the voters' list of any division who had reason to believe that during the hours of polling he would be absent from that division. This provision was not to apply to voters in divisions wholly or partly situated in any municipality unless the voter had reason to believe that during the hours of polling he would be outside that division or any other division wholly or partly situated within that municipality or any other municipality contiguous thereto. By this means, it was hoped to relieve voters in rural areas who, being called away on business on election day to some place outside the divisional boundary, would otherwise have found it impossible to return in time to cast their votes at their own polling stations. These provisions were amplified in 1946 ⁽³⁾ and 1948. ⁽⁴⁾

In 1948 a more clear definition of persons eligible to exercise postal votes was given, and they now fell within three categories. The first group concerned those who would be pre-

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- (1) Section 13, "The Electoral Amendment Act, 1945" (N.Z.) (Act No. 10 of 1945)
 - (2) Section 56, "Electoral Act, 1918, Amendment Act, 1926" (Act No. 11 of 1926)
 - (3) Section 43 "The Electoral Consolidation Act, 1946" (Act No. 46 of 1946)
 - (4) Section 15, "Electoral Law Amendment Act, 1948" (Act No. 50 of 1948), amending Section 43 of Act No. 46 of 1946

vented from casting their votes because of serious illness, physical infirmity⁽¹⁾ or in the case of a female, her advanced pregnancy or confinement within fifteen days before polling day. The second provision concerned those voters who throughout the hours of polling on polling day would be outside the division in which they were registered, and not within ten miles from the nearest polling station in that division by the nearest practicable tests. Thirdly, those voters who would be on Prince Edward Island throughout the hours of polling on polling day. Such persons could make the necessary application to the Returning Officer of their respective electoral divisions not later than 4 o'clock in the afternoon of the fifth day before the polling day, to vote as an absent voter. These applications had to be witnessed in some cases by a Magistrate, Justice of the Peace or other official as provided. Persons registered in rural divisions⁽²⁾ may also vote by declaration. This procedure is quite widely used in cases where workers are employed in a nearby town but are required to cast their votes at a polling station near their homes. If such persons would be unable to reach their own polling stations after travelling back from work in the evening, the procedure adopted is for them to break their journey home at a place within easy distance of a polling station, and there vote by declaration.

Prior to the last election, no great use had been made of the postal vote, but statistics for the 1953 election reveal that an average of 12 per cent. of the voters in the Union applied to cast their votes by post. The margin of difference between the percentage of applications made in the four respective provinces was small. The highest figures were returned by the

(1) Under Section 48 of Act No. 12 of 1918, voters incapacitated by blindness or other physical cause could have their votes cast for them, but only on personal application to the presiding officer at the time of polling.

(2) Voting by declaration is not permitted in urban constituencies.

Orange Free State, where there was an average application of 12.6 per cent. The average percentage in the Cape was 12.2, in Natal 12 and in the Transvaal 11.2 per cent.⁽¹⁾ A Cape constituency issued the highest individual number of postal votes. They totalled 20.6 per cent. or 1,918 votes of the total votes cast.⁽²⁾ The highest percentage of postal votes cast in a Natal constituency was 20.1 per cent. In the Transvaal, the highest figure was 19.2 per cent. and in the Orange Free State 17.0 per cent. These figures are sufficiently high to obviate the need for any amendment at the present stage in the statutory provisions regarding postal voting. Such a considerable use of the postal vote would suggest that the provisions in regard thereto have been extended to meet every contingency and are sufficiently simple in application to ensure that every person can avail himself of his right to vote. In the 1951 general election in New Zealand, 3.27 per cent. of the electorate exercised postal votes and 5.82 per cent. voted as absent voters,⁽³⁾ which suggests that the device is not as popular there as in South Africa, despite the rural unloading in the latter country.

A further factor which has bearing on the issue of the difficulties experienced by the rural voter in casting his vote is the number of polling stations in each division. In 1918, it was provided that there should be one polling station in each division or if a division was divided into polling districts, one polling station within each such polling district.⁽⁴⁾ In 1931, a proviso was added to this⁽⁵⁾ to the effect that a returning officer may be directed to establish two polling stations in close proximity to each other in a division or any polling district therein, one of which would be used for recording the

(1) Column 2615, 1953 Hansard (2) Column 2616, 1953 Hansard

(3) New Zealand Yearbook, 1951-52

(4) Section 41(2) of "The Electoral Act", 1918 (Act No.12 of 1918)

(5) Section 18 of "The Electoral Laws Amendment Act, 1931"
(Act No. 35 of 1931)

votes of male voters and one for female voters. In 1946,⁽¹⁾ it was provided that any division could be sub-divided into as many polling districts as necessary and that the number of polling districts could be increased or decreased or the boundaries thereof altered, as thought necessary. The Minister was empowered to direct the establishment of more than one polling station in a division or in the polling districts of such division. In practice, upon the completion of the Delimitation Commission Report, the various electoral divisions are sub-divided into polling districts,⁽²⁾ the number thereof in each constituency depending primarily on the area covered by the division. In urban areas, where the total electorate of the division may have to cast their votes at one polling station,⁽³⁾ the individual may expend as much time and effort in queueing and waiting as the rural voter does in travelling to the polling station. In the Cape, Sea Point division is made up of three polling districts, whereas Namaqualand has 52 and again in the Transvaal, Hillbrow comprises one polling district, and the rural seat of Lydenburg is made up of 36.

Statistics actually reveal that a higher percentage of rural voters go to the polls than urban voters, and instances of this can be found even prior to Union. One factor in the South African Party victory in 1908 was the very high percentage polling in the country constituencies, reaching a maximum of 91.52 per cent. in the Riversdale area.⁽⁴⁾ This was largely due to the Bond organisation. In the first two elections held after Union, the rural division of Albert in the Cape showed a percentage poll of 76.47 and 91.72 per cent. respectively,

(1) Section 40 of "The Electoral Consolidation Act, 1946" (Act no. 40 of 1946)

(2) See Proclamation No. 50, 1953, in Govt. Gazette No. 5021 dated 6-3-1953

(3) In Durban Umbilo division, with an electorate of 11,646, there is only one polling station and during the hours of polling at the 1953 elections, over 9,000 persons cast their votes there.

(4) L. of J. Colvin II, pp. 289-90

whereas Cape Town Harbour which had been given the heaviest load by the Second Commission, showed a percentage poll of only 60.93 in 1915.⁽¹⁾ At Humansdorp, Ladysmith and Riversdale, 85.15 per cent., 86.78 per cent. and 87.81 per cent. of the total number of voters recorded their votes in the 1910 elections.⁽²⁾ Similar examples can be found from among the Transvaal rural divisions. The percentage poll at Ermelo in 1915 was 82.28 per cent. and at Germiston, the second most heavily loaded seat, there was a 69.44 per cent. poll. Von Brandis was the most heavily loaded seat but only showed a 71.20 per cent. poll at the same election. The votes polled in Smithfield in the Orange Free State in 1910 and 1915 amounted to 66.67 per cent. and 75.84 per cent. respectively. In Natal, however, Vryheid with the ^{largest} unload in 1915, showed a polling of 59.10 per cent. as against 75.59 per cent. recorded by Durban Greyville with the heaviest load. In comparing figures for the 1948 and 1953 elections, it must be remembered that some of the most heavily loaded seats were uncontested. The following seats were given heavy loads by both the Ninth and Tenth Commissions, and the percentages they returned at the polls⁽³⁾ were:-

	1948	1953
Gardens (Cape)	74.1 per cent.	83.0 per cent.
Salt River (Cape)	74.4	84.8
Mayfair (Transvaal)	90.0	89.5
Westdene (")	75.2	86.2
Bloemfontein City (O.F.S.)	87.3	90.3

The following rural seats polled the highest number of votes at the two last elections:-

	1948	1953
Kuruman (Cape)	Unopposed	89.8 per cent.
Namaqualand (Cape)	84.3	84.6
Prieska (")	91.4	93.9
Transkeian Territories (Cape)	70.4	85.8
Pietersburg (Transvaal)	83.0	89.0
Newcastle (Natal)	87.5	93.3
Vryheid (")	88.5	91.3
Fauresmith-Boshof (O.F.S.)	85.0	84.9

With the average percentage poll standing at a very high

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- (1) 1915 percentages taken from the 1910/18 S.A. Yearbook
 (2) 1910 figures taken from S.A. Motorist of 1st November, 1915
 (3) Figures taken from "Cape Times" newspaper

figure, and with some of the highest percentages recorded being in respect of rural divisions, it would appear that the percentage of polling in a constituency depends on party political organisation and the degree of enthusiasm displayed by the electorate. A comparison of Natal figures for 1910 and 1915 with those of 1948 and 1953 would seem to illustrate this point.

The various factors to which attention has been drawn indicate that the rural population no longer labour under the same difficulties as in 1910 and that they have at no time allowed their isolation to interfere with their political activities. Whether or not these facts should be considered in interpreting the sections of the South Africa Act referring to delimitations was apparently the point on which the Ninth and Tenth Commissions were in disagreement.

CHAPTER SIX

HOW FAR THESE PROVISIONS MEET THE NEEDS
OF THE PRESENT DAY

The various Commissions have drawn attention to the fact that differing approaches have been made to the discretionary clauses of the provisions regarding delimitation. These differences touch fundamental issues, and have been responsible for drawing a clear line between the two leading political parties. The principles involved have pervaded non-party elements. In setting out the plan adopted by the Tenth Commission in regard to certain constituencies in the Cape Province, ⁽¹⁾ where boundaries were radically changed or in regard to which different enunciations of principle were put forward, an attempt will be made to indicate the extent to which the Commissioners were able to utilise the plans presented to them by the two leading political parties, and the ensuing election results will be appended. ⁽²⁾

The starting point in the delimitation of the Cape was the selection of the division to be eliminated. The Nationalist Party suggested Calvinia in the north, which involved spreading these voters southwards. The United Party acknowledged that certain changes would have to be made in the boundaries of Namaqualand, Calvinia, Ceres, Beaufort West and Victoria West, but felt that the areas covered by these divisions were so large that their elimination could not be recommended, as the underlying consideration should be to prevent the seats becoming too unwieldy. They suggested the elimination of Cradock and Graaff-Reinet so that voters could be given off to needy bordering

(1) Plans for the other three provinces were not available.

(2) Refer to maps 2 and 3 for comparison of Ninth and Tenth Delimitation schemes.

constituencies and what remained of the two constituencies could be amalgamated under the name "Karoo-Midlands". The Commission's choice fell on Calvinia, which stood at 21.6 per cent. below quota, whereas Graaff-Reinet had more successfully maintained its voting strength, being only 15.3 per cent. below quota. The Nationalist Party were now certain that the Commissioners would have to follow their plan further, since the considerable surpluses in voters in the northern suburbs of Cape Town and the Cape Flats could no longer be pushed northwards.

The major increases in voting strength in the Cape had taken place in the Port Elizabeth-Uitenhage area, made up of five seats, and in the Cape Peninsula and immediate environs. Both the political parties and the Commission were in agreement on the removal of all rural polling districts from Port Elizabeth District, which was 39.2 per cent. above quota, so that a purely urban division could be framed. Port Elizabeth Central was 2.2 per cent. below quota, and the United Party wanted the deficiency to be made up by transferring 1,089 voters from Port Elizabeth North and 598 voters from Port Elizabeth District. The Commissioners preferred, however, to make up the deficiency firstly from Port Elizabeth District, supplemented by a coastal strip from Port Elizabeth North, on the grounds of the community of interest clause. The Commission then determined on creating the new seat of Port Elizabeth West extending all along the Cape road, and combining the more well-to-do parts of the city and the Coloured area of Schauder Township.

This grouping of voters made it possible to make Port Elizabeth North a seat consisting mainly of a workers' and factory area. A difficult factor was the determination of in which division Schauder Township was to be placed, since it fitted neither into Port Elizabeth North nor Port Elizabeth West. If the area had been added to Port Elizabeth North, a workers' area would have had to be given off to Port Elizabeth West. The

Commission felt there was no justification for disturbing the community of interests in both seats where it could be left undisturbed in one. From the point of view of the political parties, however, there is the additional factor that the Coloured voters in Schauder Township could be relied upon to vote with the well-to-do element in Port Elizabeth West, so this delimitation resulted in the concentration of the supporters of one party in the one division. In the ensuing General Election, Port Elizabeth North was won by the Nationalists by a narrow majority of 521 votes⁽¹⁾ and the new seat of Port Elizabeth West was won by the United Party with the large majority of 6,328. The principle upon which the Commission based its decisions in the Port Elizabeth area appeared to be that of community of interest⁽²⁾ interpreted from the economic point of view, in that the higher economic levels of the electorate were grouped together on the one hand and the industrial element on the other.

In the delimitation of the Cape Peninsula and environs, the Nationalist Party set off with the considerable advantage that the distribution of the surplus voters therein and the voters previously contained in the Calvinia division, would have to follow the general plan they indicated. In the introduction to the United Party plan for this area it was asserted that the distribution of surplus voters could only be made in a northerly direction, for certain stated reasons. Three constituencies bordered on the Cape Peninsula, namely Hottentots-Holland, Stellenbosch and Malmesbury. On the border of the latter two was the division of Paarl. No absorption could be effected in this direction without dividing up Paarl, and because Hottentots-Holland and Stellenbosch were bounded by the natural boundaries of the sea and the Hottentots-Holland and Drakenstein Mountains, which were to be taken as a firm dividing line between the Western Province and the South-Western Districts, the only place where the surplus voters could

(1) Been a U.P. seat since formed by Fifth Commission. Been retained by U.P. with 1,412 majority in a by-election in 1949
(2) pp. 20-21, Tenth Del. Com. Report

be absorbed was in the Malmesbury division area. The Nationalist plan was based on two opposing arguments. Firstly, their choice of Calvinia for elimination closed off the northern districts in so far as any pushing of voters from the Peninsula was concerned. Secondly, they made the important contribution that it was impractical in a mountainous area to be limited by natural boundaries. Such a limitation, they felt, made it practically impossible to frame divisions conforming with the requirements of the South Africa Act. This expression represented a departure from precedent in so far as the Cape Peninsula and environs were concerned, for past delimitations had been largely conditioned by topographical features, it being attempted to frame constituencies in such a way that they were bounded by the mountains but did not go over them. Where this had not proved possible in the past, the Commissioners had clearly set out their reasons for departing from this practice.⁽¹⁾

The Memorandum covering the United Party plan revealed that it had been attempted to localise the disturbance of boundaries because of a provision to this effect in the South Africa Act and on the further grounds that existing boundaries denoted to a large extent the manner in which previous commissions had applied the other requirements of the Act, particular reference being made to the Ninth Commission. Seven constituencies⁽²⁾ remained unchanged in their overall plan and, in many others, the changes were of a very insignificant nature. The Nationalist Party plan involved radical changes, and the reasons offered by the framers thereof were these. In the 1948 General Election, their party had concentrated on taking the country seats.⁽³⁾ In 1953, they contested certain town seats⁽⁴⁾ which had been uncontested before to test their strength and to provide encouragement to their

(1) p. 21/2, SECOND Del. Com. Report provides an example.

(2) Caledon, Worcester, George, Transkeian Territories, Gordonia, Kimberley District and Kimberley City

(3) cf. Table showing the number of loaded seats won in 1948 and 1953 (p.)

(4) Cape Flats, Gardens, Maitland (Woodstock division in 1948), Salt River, Wynberg

supporters there, anticipating that by the time of the next General Election, Nationalist supporters would have converged upon the Peninsula area. They acknowledged that their plan had apparently little meaning in the 1953 election, but they considered they were making adequate provision for population trends in light of the amendment providing for ten-yearly delimitations.⁽¹⁾ Table Mountain had in the past formed a general boundary line, but this was no longer to be the case. On being acquainted with this departure from precedent, the United Party asked leave to prepare a new scheme based on similar premises, if the Commission were to entertain such radical changes, as their existing scheme could prove of little assistance to the Commission.

The Commissioners selected Hottentots Holland to absorb the superfluous voters from the Cape Peninsula. This made the seat 34 per cent. above quota. The suggestion was made by the Nationalists that the seat should shed voters by surrendering the towns of Somerset West and Gordons Bay to Caledon. The Commission was faced with the problem that if these two districts were not added to Caledon, voters would have to be taken from the northern suburbs of Cape Town, which would have resulted in the disintegration of this latter area. It was this movement that the United Party had in the first instance envisaged, planning to make their major changes in the Bellville area, believing there was no justification for taking voters over the Hottentots Holland Mountains.

The United Party made representations to the Commission against Strand and Somerset West being put in different constituencies. One reason given was that both these areas and Gordons Bay were within the same magisterial district. A further complaint was that the Commission had taken the railway line as the boundary between the Strand and Somerset West, whereas it was in reality the national road. This error would mean that Van der Stel,

(1) The Commission, however, declared itself bound by the voters' lists valid at the time of delimitation. p.6, Tenth Del. Com. Report

the residential area between the railway line and the national road, which is part of Strand municipality, would be in a different constituency from the rest of the Strand. The Commission, however, adhered to its scheme, renaming the constituency "False Bay" since the Hottentots Holland mountain range no longer fell within this division. This arrangement meant that the division comprised parts of Wynberg, Bellville, Stellenbosch and Somerset West magisterial districts. The name of "Hottentots Holland" was given to the seat formed out of Hermanus, Somerset West and Gordons Bay, since the mountain range fell within the middle of this constituency. The Commission held that Sir Lowry's Pass was no longer any obstacle because of the result of the development of roads in this area. Hottentots Holland splits Somerset West and Caledon magisterial districts, and if magisterial boundary lines had been followed, the Strand would have fallen more naturally into this seat than Somerset West. Somerset West was a rich farming community with the same type of residents as were found in Hermanus, so the Nationalists were in favour of the two areas being connected. The Strand on the other hand was made up of workers, and the United Party contended that if this area had been included in the Hottentots Holland division instead of Somerset West, they would have won the False Bay seat. As it was, the Nationalists won the False Bay seat with a majority of 932 and Hottentots Holland was won by the United Party with a majority of 2,286. These changes had repercussions in the neighbouring districts of Caledon and Brèdasdorp.

The Nationalists admitted that as it stood, Caledon was a United Party stronghold, and if they were to have any success in this division, considerable changes would have to be made. It is hardly surprising that the United Party wanted to leave Caledon completely unchanged, with the electoral division falling within the magisterial district of that name. In the neighbouring division of Brèdasdorp, the magisterial district of the same name was also retained intact, with part of Swellendam and all Heidelberg magisterial districts also included. Under the Commission's

scheme, Caledon magisterial district was cut in half, the one half going to Hottentots Holland constituency. Polling district 140 was separated from the remainder of Bredasdorp magisterial district, Swellendam magisterial district was split and the whole of Heidelberg magisterial district was included in Swellendam. A glance at the pre-Union map of this area reveals that Caledon constituency in 1909 embraced both Caledon and Bredasdorp magisterial districts.⁽¹⁾ The name of Caledon-Bredasdorp was given to this seat both in the Nationalist plan and in the Commission's plan, and a comparison of the polling districts included in this seat under both plans showed there was general agreement upon the main lines thereof. Another notable instance where the Commission were able to use a suggestion from the Nationalist plan was in connection with Paarl.

Since the Drakenstein and French Hoek areas had been added to Stellenbosch, the Commission were compelled to take Rawsonville area (polling district 1,084) from Worcester and give it to Paarl, with the result that Paarl division extended over the Drakenstein Mountains. Since the national road had been opened, however, communications between the two areas were excellent and there was community of interest in the type of farming undertaken. The United Party had kept the electoral boundary coincident with the magisterial boundary of Paarl in conformity with a general practice markedly adopted by the Seventh Commission, but the plan adopted involved polling district 1,084 being taken from Worcester division, and the remainder of Paarl magisterial district being included in Malmesbury division. The Nationalist Party map also envisaged the incorporation of polling district 1,084 in Paarl division, whereas the United Party plan left Worcester unchanged. In the election, the Nationalist Party won Paarl^{seat}/by 358 votes. Mountain barriers were ignored in the

(1) See Map 1

case of Ceres, where the Karoo area of Calvinia situated behind the Cedar Mountains was added to this seat. Election results showed very little change here from the result of the 1951 by-election.⁽¹⁾ Neither party made any particular contribution to the delimitation of this seat.

In the delimitation of the Northern and Central Cape, the Commission found itself in a position to retain a natural boundary line. This area contained the Calvinia seat which was to be eliminated, so it followed that the United Party plan for this area would be of little assistance to the Commission. They did suggest, however, changes in Victoria West division with a resultant change of name to "Prieska" and the Commission's plan also involved such a name change. The United Party agreed that the Orange River formed an excellent boundary over vast distances, but held the opinion that in the irrigation settlement of Douglas, both banks of the river should, with a view to community of interest, be incorporated in the same constituency and indicated that this could be effected by including polling district 535 in Kuruman division instead of in Prieska as the Commission intended. The United Party contended that only 2,170 morgen were under irrigation on the southern bank, whereas 5,180 morgen were under irrigation on the north bank. Under the Commission's plan, however, the irrigation areas on the southern bank only of the Orange River, reaching from Karos to Douglas, were included within one division. At the 1948 General Election, Victoria West had been won by the Nationalists with the narrow majority of 24. They retained this seat, now named "Prieska", with a slightly enlarged majority of 778 in 1953.⁽²⁾

The Nationalists observed that the main source of their opposition came from the extreme coastal area, and felt this would remain true for succeeding delimitations, so they tried to group together centres of United Party strength. They suggested

(1) A Nationalist seat in 1951 and 1953 with majorities of 2,418 and 2,929 respectively

(2) Election results of these two seats from 1938 showed that they had been won throughout by narrow majorities and passed from one party to the other.

a new division called "Table Bay" which ran from Green Point to Milnerton, being connected only by a thin coastal strip, and at one point the connecting link was Salt River bridge. The Commission complained that this strip of territory was too narrow and would not accept the plan, despite the Nationalist Party arguments that the islands included in Green Point were nearer to Milnerton, and that the component areas had similar interests and the same type of inhabitant. An argument used by the Nationalists in connection with the coastal divisions in their plan was that, where communications were difficult by land, use could be made of sea communications.

In the course of delimitation, certain principles underlying the party plans had revealed themselves. The United Party had been primarily concerned with statistical considerations, and the Commission acknowledged the considerable benefit it derived from the accurate and pertinent statistical information provided. Where no changes were necessary on this basis, they left existing boundaries intact. Where changes had to be made, they tried to observe natural boundaries and to maintain coincidence between magisterial and electoral divisions. The Nationalist plan was so constructed as to give the greatest emphasis to community of interest⁽¹⁾ almost to the extent that, in certain instances, the vocational principle was made the basis of representation. The Nationalists apparently sympathise with the view that territorial constituencies have no communal interests of their own in the vast number of problems now coming before Parliament. A parliamentary representative cannot adequately represent all elements in a multi-vocational division, so such divisions should rightly be eliminated. In all, they put forward a very good case for proportional representation. The interpretation given to the community of interest clause seems to have taken the twist of depending solely on the economic level of the electorate, and therefore involved the separation of the

(1) cf. comments of First Delimitation Commission on this clause (p.106/7).

residential areas of the different economic groups, even though voters could have the same interest in a certain occupation or industry without necessarily deriving the same financial benefit therefrom. They ignored the fact that the adoption of the vocational principle tends to accentuate economic and social divisions. A natural corollary of this interpretation was to emphasise means of communication from the point of view of rail and road facilities as against physical features, and they attempted to build up constituencies round the railway lines and bus routes where Nationalist supporters were concentrated. The higher economic groups had residential areas on the mountain sides, so they contended that the provisions of the South Africa Act could be better fulfilled by forming constituencies of such elements living on different sides of the mountains. In an appreciation of this argument, it must be borne in mind that the Nationalist Party have pursued a deliberate policy of absorbing the unemployed poor white element into the Railway organisation and providing them with accommodation near their work. The point at issue is, whether the provisions of the South Africa Act lend themselves to this interpretation, and how far the Commission appear to have worked from the same premises.

Sub-sections (2) and (3) of Section 40 pose a difficult problem for the Commission in that at one and the same time they are required to delimit districts conforming with the statistical requirements and to give consideration to the five factors listed thereunder. The system can only give adequate representation if the task is undertaken in a spirit of fairness, and this has in general been the case. Needless to say, the political parties will try to put forward plans in their own favour, by taking away or adding strategic polling districts, while still keeping within the statutory requirements. The fact that the Commission accepted in several cases the more radical interpretation given to the community of interest clause in the 1952 Nationalist Party plan, where Opposition supporters were grouped together in some instances with a resultant violation of other clauses

of the provisions, indicates that where discretionary power is allowed, there is the ever-present danger of gerrymandering.

The electorate may rightly look for examples of gerrymandering where the House of Assembly does not provide an exact reflection of its political opinions. In the 1948 General Election, 623,736 votes were cast for the United Party from which they won 71 seats, whereas the Nationalists won 79 seats though polling only 530,837 votes.⁽¹⁾ This gave an average vote per seat of 8,786 to the United Party and 6,719 to the Nationalists. Commenting on this anomalous result, Smuts remarked "South Africa's electoral system by which a minority can govern the majority of the people is in conflict with the principles of democracy."⁽²⁾ In the 1953 elections, it was estimated that the Nationalists won 61 per cent. of the seats with a mere 45 per cent. of the votes. It must be borne in mind, however, that with a system of plurality elections in single-member constituencies, cases of misrepresentation are inevitable, but discrepancies arising therefrom usually adjust themselves from year to year. The danger here is that public dissatisfaction or apathy at unjust election results may have serious repercussions on the political life of the country. *

The tendency in South African politics has been to despise the more obvious form of "gerrymander", as ^{is} evidenced in two ways. The more recent delimitation maps⁽³⁾ do not reveal any cases of obvious "gerrymanders", that is, divisions of bizarre shapes in imitation of the practice begun in America by Elbridge Gerry. There have been instances where the Commissioners themselves have complained over the unsatisfactory shape of certain constituencies framed in their plans,⁽⁴⁾ but no more compact area suggested itself. Because of the popularity of this device in America, statutory provisions have been framed⁽⁵⁾ to provide that congressional districts should be contiguous, compact in form and

(1) Figures taken from Evans Memorandum

(2) In a Dispatch message of 15th July, 1948

(3) Maps only available from and including the Seventh Commission

(4) Natal Coast division, p. 22, Third Del. Com. Report

(5) In 1842

approximately equal in population, which resulted in the "shoe-string" type of constituency comparable to that of "Table Bay" suggested in the 1952 Nationalist Party plan. Frequent representations were made to the various Commissions that in the Orange Free State the small urban areas, though not contiguous, should be grouped together for electoral purposes, but this suggestion was never favourably received. It has not been found necessary to frame similar provisions in South Africa, and popular sentiment in America has been slowly developing against this sort of practice.

Secondly, there are no blatant cases of the lion's share of the newly created seats going to the party in power. Results in these seats seem proportionate to other party successes at each general election. For example, the United Party won 15 of the 19 seats at the 1938 election when they were returned by a large majority. In 1943, they won 11 of the 17 new seats and in 1948 and 1953 respectively, the Nationalists won 7 of the 13 and 7 of the 12 new seats. Only a few examples are apparent of narrow Government majorities and large Opposition majorities in connection with the new seats. At the 1920 General Election, the three leading political parties won one new seat each by very slender majorities.⁽¹⁾ At the 1929 elections, the delimitation of the new seats tended more to favour the one party in that three new South African Party seats were unopposed, while the Nationalists won two seats with majorities of 8 and 112. At the 1943 elections, two new United Party seats and one Dominion seat were unopposed. In 1953, two new United Party seats were unopposed and a third was won by a majority of 6,328, while on the other hand, the Nationalists won three seats by the narrow majorities of 240, 932 and 778 respectively. There are, however, more subtle ways in which the principle behind gerrymandering can be applied.

(1) The Nationalists had a 16 majority, the Unionists 19 and the S. A. Party 79.

On three occasions since Union, the party with the minority backing has been returned to power. The leaders of this party have shown themselves to be great constitutionalists, so a form of gerrymander having a legal basis must be looked for. The loading device immediately comes to mind. While the rural population was still ⁱⁿ a majority, ⁽¹⁾ it sought to perpetuate for all time its domination in the legislature by inserting in the constitution provisions limiting the representation of urban areas on the grounds of the corruption and radicalism of the cities and towns, whose increasing wealth and importance caused the rural population considerable alarm. ⁽²⁾ The idea that a country vote should be of more value than a town vote has come to be accepted as a "natural right" by that section of the community benefiting therefrom and beyond dispute owing to its incorporation in the constitution. It would be political madness for a party to hold in disrespect a constitution which returned it to power, though the results thereof were contrary to the whole idea of a democratic parliamentary system. The results of this concession to the country divisions have been particularly pernicious in South Africa. Party line-ups have been largely on racial lines, and there has been the tendency for one party only to benefit from the 15 per cent. allowance.

The following table shows the number of unloaded and loaded seats at each election and the number thereof won by the party returned to power and by the Opposition.

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- (1) Witness the preponderance of the farming element on the National Convention and under the First Delimitation Commission, the ratio between unloaded and loaded seats was 60:61.
- (2) cf. practice in New York and Pennsylvania, where constitutional provisions prevent metropolitan municipalities from dominating the states.

<u>General Election</u>	<u>No. unloaded seats</u>	<u>Won by Govt. Opposition</u>		<u>No. loaded seats</u>	<u>Won by Govt. Opposition</u>	
1910	60	48	6	61	18	33 ⁽¹⁾
1915	67	47 ⁽²⁾	19	63	47	8
1920	66	31	32	66	35	12
1924	69	47	21	66	16	32
1929	78	58	19	69 ⁽³⁾	19	42
1933	80	Coalition Govt.		70	-	-
1938	69	48	19	81	63	8
1943	67	33	31	83	56	12
1948	68	58	10	82	21	55
1953	66	54	12	84	34	50

A decisive factor at each election appeared to be the degree of success of the different parties with regard to the unloaded seats. On two occasions,⁽⁴⁾ a loss of strength by the government in the latter divisions at one election was followed by defeat at the succeeding election, owing to a further decrease in the number of unloaded seats won, though its numbers were almost retained in the loaded seats. The number of unloaded seats has remained fairly constant. A peak was reached with the fifth and sixth Commissions when the figures rose to 78 and 80 respectively. Otherwise, from 1913, no greater variation has been shown than from 66 to 69. Over the period covered from the appointment of the Second to the Sixth Commissions, the number of unloaded seats exceeded the number of loaded seats. While the rural party could thus appear to be in the majority, that their majority was made the larger by the loading device was not so serious a defect. When their numbers no longer warranted them being retained in office, the system by which this could be achieved was no longer justifiable.

(1) Totals made up from seats won by smaller parties

(2) In 1915 and 1920, "Govt." represents S.A. Party and Unionists.

(3) One seat stood at quota.

(4) In 1920 and 1943

Since Union, six more unloaded seats have been formed as against twenty-three loaded seats, indicating the greater urban population increases. An interesting fact is revealed which throws light on the return to power of the minority party in 1948 and 1953. In the two latest elections, the Nationalist Party successfully contested the greater majority of the unloaded seats. A feature of the 1953 General Election was the continued decline of the United Party votes in the platteland and in the Transvaal, the United Party lost Nigel, its last remaining outpost in the high platteland. With the allowance for a departure from quota up to 15 per cent., there can be as much as 30 per cent. difference in the number of voters in a rural division unloaded to the limit and a heavily loaded urban seat. Pietersburg and Cape Town Gardens constituencies provide typical examples. The former, which is a Nationalist seat, has 8,667 voters, whereas the latter with an electorate of 12,665 is a United Party seat. It is estimated ⁽¹⁾ that if each constituency had been given a number of voters approximating to the Union quota, Malan's majority would have been reduced from eight to two in the 1948 General Election. Coupled with this is the singularly unfortunate circumstance, as far as the Opposition party are concerned, that the seats with the largest electorates are won by them with much bigger majorities than are generally shown for the rural seats. There seems little doubt that the reasons for the minority party being returned to power lie here.

The simple but effective principle behind gerrymandering is for the party effecting the delimitation to spread its majorities over as many districts as possible and concentrate the strength of its opponents in as few districts as possible so that it will do them the least good. These districts will elect Opposition members by wide majorities, while the remainder of the seats will

(1) Evans Memorandum

be won by the party in office with small majorities. Conditions in South Africa lend themselves naturally to this device, as a map published⁽¹⁾ over the 1953 election period clearly indicated. United Party strongholds were to be found mainly in Natal, at the coastal towns in the Cape and on the Rand, while Nationalist supporters were spread over an immense expanse of territory. At the 1948 General Election, the average Nationalist majority per seat was 1,650⁽²⁾ whereas the average United Party majority per seat was 3,145. A similar result was witnessed in the 1953 Elections when the Nationalists had an average majority of 2,107 votes per seat as opposed to the United Party average majority of 4,299⁽³⁾ votes per seat. The number of uncontested seats must be taken into account in any consideration of concentrations of voters.

In the 1910 Elections, the South African National Party with a mainly rural backing won 29 of a total of 40 unopposed seats. This was largely due to a general lack of political organisation. After the election returning the Coalition government in 1933, the tendency became apparent for the United Party carrying the weight of urban support (they won 63 of the 81 loaded seats in 1938) to win the great majority of the unopposed seats. In 1938, they won the total of 4 seats, in 1943, 16 of the 18 unopposed seats, in 1948, 11 of the 12 unopposed seats and in 1953, 18 of the 20 unopposed seats. With the total membership of the House standing at 150, it is significant of the political life of the country that such a high number of seats should contain voters of predominantly the same political outlook. Such a result has developed because of the racial problem in South Africa and in no way represents the machinations of politicians. Just as natural trends in the past have been responsible for producing large United Party majorities in the urban areas, so the influx of Afrikaners into the towns may effect some readjustment in the course of time. Whether the same degree of optimism can be

(1) In "Die Burger" dated 18th April, 1953

(2) Includes estimate of probable results of 12 unopposed returns and probable line-up of smaller parties.

(3) United Party figure includes 5 Labour seats. In calculations for both parties, unopposed seats are calculated on the basis of 4,000 to the winner and 2,000 to the loser.

felt with regard to the loading device is open to conjecture.

As the more obvious form of gerrymander has not found favour in South Africa, it might be considered questionable how long the legal gerrymander will be retained when there is general awareness of its undemocratic character. A constitutional amendment of 1952, however, indirectly upheld the principle of giving greater value to the rural vote in that the proposal to effect delimitations at ten-yearly intervals would mean that with the progressively increasing migration from the platteland to the towns, the denuded rural seats would continue to enjoy for much longer a disproportionately advantageous representation. With the knowledge that this population trend has not gone unnoticed, it can be said that this amendment represents a conscious effort to perpetuate and extend the limits of this "legal gerrymander." Government inaction for a period of ten years can only result in inaccurate representation, when population increases in the cities are rapid and uneven and when industrial development such as was recently witnessed in the Orange Free State takes place. Several Commissions have on different occasions referred to New Zealand practice. By comparing the constitutional provisions and political practices in the two countries, some possible indication might be found of the course events might take in South Africa in regard to the loading device.

Though, prior to 1945, both countries had a loading device, there was an important difference between the actual legislative provisions in the two countries with regard thereto. In New Zealand,⁽¹⁾ it was definitely stated that it was to be a "country quota" in that the 28 per cent. allowance was to be made in respect of rural divisions only.⁽²⁾ To ensure that the interpretation of the two Representation Commissions should not detract from this,

(1) See "Electoral Act, 1927" (Act No. 44 of 1927) (N.Z.)

(2) Part 1, Section 7(2)(a), Ibid.

the terms rural and urban were defined on a numerical basis.⁽¹⁾

The changes made in the percentage of allowance from time to time could possibly be due to the more rigid framing of the provisions as compared with those in South Africa, where considerable discretionary power was allowed, so that the application could be adapted to suit current conditions. In the South Africa Act, on the other hand, there was nothing to indicate that the allowance was to be made in favour of the rural population only. It was the early Commissions who interpreted the 15 per cent. allowance as a country quota and in so doing established a precedent for those who followed them. The First Delimitation Commissions were no doubt aware that in delimiting districts in New Zealand, the Representation Commissions had to give consideration to four factors⁽²⁾ corresponding to clauses (a) to (d) of Section 40(3). The New Zealand Commissions were also bound to give consideration to the "country quota", whereas in South Africa the remaining factor for consideration was the clause referring to sparsity and density of population, so it was an easy step to read the same meaning into the two. A similar state of affairs existed in Australia in that consideration had to be given to four factors⁽³⁾ corresponding to clauses (a) to (d) and the 20 per cent. allowance was interpreted as a concession to the rural districts. Add to this the fact that the first Commission were influenced by their acquaintance with the discussions which had taken place on this subject during the framing of the Constitution and by their knowledge of what the majority of the people read into the provisions, and their interpretation can easily be justified on these grounds in 1910. It is not so easily justifiable at the present day, as it is contrary to all ideas on democratic government, but opinions on this point are probably as divided in South Africa as they were in New Zealand in 1945, when the Labour and National

(1) Part 1, Section 7(1) Ibid.: "'Urban population' means any population contained in a city or borough having a population of over two thousand, or contained in an area within five miles of the Chief Post Office of Auckland City, Christchurch City, Dunedin City, or Wellington City." 'Rural population' implied any population other than urban.

(2) Part 1, Section 7(2)(e), Ibid.

(3) Act 1, Sec. V, No. 3

parties gave conflicting explanations as to why the country quota was abolished.

The National Party gave political expediency as the reason for the introduction of the Electoral Amendment Bill by the Labour Government in 1945, and their argument can be substantiated by election results from 6th December, 1935 to 30th November, 1949, the period during which the Labour party were in office. During this period, their 1935 majority of 30 had gradually been reduced in successive elections to 26, 10 and 4 in 1946, when both the Labour and the National party won 38 of the 76 European seats and the 4 Maori seats which had not been changed in 1945 were all retained by Labour. The Opposition argued that the Bill was not designed to benefit the people but the Parliamentary Labour Party, who saw defeat in sight so proposed to change the election rules. They doubted the Government's sincerity in their adherence to the principle of one vote one value since the four Maori seats which were Labour strongholds, were unchanged and they deplored any amendment of what they considered to be a highly satisfactory constitutional provision. A Labour leader was reported as having said that although "the Government has treated the farming community very liberally, it does not obtain the farmers' votes". There can be little doubt that by 1945 the Labour party saw it was losing its hold on the electorate. When they had sufficient backing to return them to office despite the country quota, this undemocratic facet had been ignored. As they saw their majority dwindling, they were no longer willing to face an election contest under this disadvantage. The major argument put forward by the Labour Government when the Bill was introduced was, that in selecting the farmer alone "as the man entitled to have a greater say in political affairs than any other person, they are attempting to establish a political philosophy which will not bear the light of investigation".⁽¹⁾ The country quota was described as the last blow of the landed gentry against the principle of "one man one vote", and the anti-

(1) p. 50, N. Z. Hansard, 1945

thesis of democracy. "The abolition of this last vestige of a system that prefers broad acres to human beings should be a clarion call to all Democrats."⁽¹⁾

To frame divisions exactly equivalent to the quota was clearly impossible, so an allowance of up to 500⁽²⁾ was provided for when the "country quota" was abolished, and this was increased to 7.5 per cent.⁽³⁾ in 1950. With regard to both these allowances, the significant point was that they were to be "for any division", either urban or rural.

The Ninth Delimitation Commission appointed in South Africa made reference to the abolition of the "country quota" in New Zealand and put forward an interpretation of the loading device more in line with modern political ideas, when they asserted that the 15 per cent. allowance to the rural divisions should not be regarded as a right. The Tenth Commission in their turn could not agree that the degree of loading and unloading was solely dependent on the sparsity and density of population. The attitudes of the South African political parties on this issue, however, suggest a greater divergence of opinion than was seen in New Zealand.

On the one hand, there is an acceptance of the principle of one vote one value. Once it is appreciated that the aim of parliamentary representation is to give each man's vote an equal weight, the old obstacles thereto are easily overridden. This group contend that the actual provisions of the Act are not responsible for the anomalous election results so much as the interpretation given by the Commissions. They feel that the wording of the Act equally lends itself to the interpretation that equal electoral areas should be the aim, with an allowance for departure therefrom in any case where consideration of the five factors made this impossible, but the number of seats since Union which have been allotted to an electorate approximating to the quota has been negligible. An opposing view is that general constitutional provisions make it clear

(1) p. 40, Ibid.

(2) Section 4, Electoral Amendment Act, 1945 (Act No. 10, 1945) (N.Z.)

(3) Section 3, Electoral Amendment Act, 1950 (Act No. 32, 1950)

that equal electoral divisions were never envisaged, and they point to the differing provincial quotas and the recent provisions with regard to South West African representation in the Union Parliament where the quota for the six seats stands at under 50 per cent. of the Union quota. The influx of rural party adherents to the towns may in time result in this group supporting an interpretation of the Act more in line with present-day practice in New Zealand. In 1910, the principle of one vote one value had a certain amount of backing, and it might have been expected that it would have been more in keeping with modern political practice if these ideas had become generally accepted by the present day. Some reference to the history of Europe in the nineteenth century, however, suggests why this has not been the case in South Africa.

CONCLUSION

The history of nineteenth century Europe was dominated by the two great movements for political liberties and national integration. Settlers to South Africa who left Europe before this movement began and settled in rural areas where they were cut off from all contact with European ideas, found themselves in the twentieth century upholding political beliefs that had lost favour a century ago. The same struggle was witnessed between the rural and urban population during the framing of Union as had taken place in Britain during the passage of the 1832 Reform Act. The title of this Act, "an Act to amend the representation of the people", was in itself the admission of a new principle since the elective principle throughout its history had been applied to the representation not of "the people" as such but of communities and interests among them which appeared, without regard to their numerical weight, to be entitled to have their views expressed. The original form of the Draft Act providing for equal rights represented a concession to the "new settlers", who were principally town dwellers. The final Draft marked a retrogressive step, and revealed the superiority of the forces behind the political beliefs which antedated the liberalism movement. While the one racial group were giving expression to the ideas released by this movement, the other

group were kept apart from them and a possible assimilation of their political ideas by their adherence to the second great movement of the time, namely that of nationalism. The Afrikaner's belief that the English-speaking South African was incapable of a genuine feeling of nationalism was mainly responsible for keeping the two groups apart. The focal point of Hertzog's political creed was his "two stream" policy on the racial issue, though an ultimate fusion between the two groups was envisaged. Krugerism which triumphed under Malan in the 1930's contemplated no such racial fusion, and the output of political theory in this decade provided the Nationalist Party with a more radical philosophical basis. ^{NEW PARA.} The liberal philosophy of the nineteenth century was rejected as being too individualistic. The democracy envisaged involved the exclusion from civic rights of whole classes of the population which were not deemed worthy to receive them. Emphasis was laid not so much on rights as on the duties of a citizen. If those who did not fall within the "Volk" conducted themselves in an approved manner, their gradual assimilation and admission to civic rights was contemplated. That this issue, with its practical effect upon parliamentary representation, has not reached a climax before is due to the fact that the injured party still retain the impression of conditions at the time of Union, when the isolation and communication problems of the rural voters were appreciated. Furthermore, the policy of conciliation between the two races pursued by Botha and Smuts lessened the feeling of antagonism at this concession to the rural population. It is only since Malan, leader of the Cape Nationalists, broke away in 1935 and formed the "Purified Nationalist Party" which became the official Opposition, that this hostile expression of political theory has come to the fore, which repudiates any idea of equal rights for all men. Such an expression seems to condone the state of affairs where a minority government is returned to power, and reveals the deep cleavage between the political outlook of

the two party groups. One can anticipate that a change of government would be speedily followed by amendment of the provisions of the South Africa Act relating to the delimitation of electoral constituencies, to ensure that majority rule shall result from future elections, and to dispel ideas contrary to the spirit of the Constitution.

